TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 315

CLARENCE D. KELLER AND ARTHUR C. LILLIE, DOING BUSINESS AS HARTFORD WINDSHIELD COMPANY, PETITIONERS,

vs.

ADAMS-CAMPBELL COMPANY, INC.; T. R. GABEL, A. F. KIPPER, INDIVIDUALLY, AND A. F. KIPPER, DOING BUSINESS AS KIPPER & COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 25, 1923

CERTIORARI AND RETURN FILED DECEMBER 4, 1923

(29,589)

(29,589)

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W. C. SHELTON, 1214 Washington Building, Los Angeles, California.

Citation.

UNITED STATES OF AMERICA,—ss.

To Adams-Campbell Company, Inc. (a corporation); T. R. Gabel, A. F. Kipper, individually, and A. F. Kipper, doing business as Kipper & Company; Harry W. Hahn, doing business as Harry W. Hahn Manufacturing Company; and Augustine S. Lockwood, individually, and Augustine S. Lockwood, doing business as Kozy Wing Auto Supply Company; and to Frank L. A. Graham and Ford W. Harris, their solicitors; to Rupert Haserot, and to W. D. Shelton, his solicitor, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 8th day of June,

A. D. 1922, pursuant to an order allowing appeal herein in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain suit in equity, wherein Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Company, are plaintiffs, and Adams-Campbell Company, Inc., et al., are defendants, and you are required to show cause, if any there be, why the decree entered by this court in the said suit in equity mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OSCAR A. TRIPPET, United States District Judge for the Southern District of California, this 12th day of May, A. D. 1922, and of the Independence of the United States, the one hundred and forty-sixth.

TRIPPET,
U. S. District Judge for the Southern District of California.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Co. vs. Adams-Campbell Company, Inc., et al. Citation. Filed May 11, 1922. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk.

Copy received May 12, 1922.

FORD W. HARRIS,
FRANK L. A. GRAHAM,
W. C. SHELTON. [1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

United States District Court, Southern District of California, Southern Division.

IN EQUITY—No. E-86.

CLARENCE D. KELLER et al.,

Complainants,

vs.

ADAMS-CAMPBELL COMPANY, INC., et al.,

Defendants.

Amended Bill of Complaint.

To the Honorable the Judges of the District Court in and for the Southern District of California, Southern Division:

Come now the plaintiffs in the above-entitled cause, and by leave of Court first had and obtained, file this, their amended bill of complaint as follows:

Plaintiffs Arthur C. Lillie, doing business under the name and style of Hartford Windshield Company; and Clarence D. Keller, bring this their amended bill of complaint against Adams-Campbell Company, Inc., a corporation; T. R. Gabel; A. F. Kipper, individually; and A. F. Kipper, doing business under the name and style of Kipper & Company; Harry W. Hahn, individually, and Harry W. Hahn doing business under the name and style of Harry W. Hahn Manufacturing Company; and Augustine S. Lockwood, individually; and Augustine S. Lockwood, doing business as Kozy Wing Auto Supply Company; and Rupert W. Haserot, and thereupon plaintiffs complain and say:

I.

That said plaintiff, Arthur C. Lillie, is, and at all times herein mentioned was, doing business in the County of Los Angeles, State of California, and elsewhere, under the firm name and style of Hartford Windshield Company pursuant to a certificate to that effect made, executed, acklowledged and filed by him with the Clerk of said County on the 6th day of March, 1918, which certificate was published as by law required.

That said plaintiff, Clarence D. Keller is, and at all times named in this complaint was, a citizen of the State of [1] California, and a resident of Los Angeles County therein.

That said defendant, Adams-Campbell Company, Inc. was, at all times named in this complain,t and still is, a corporation organized and existing under the laws of the State of California, and having its principal place of business in the County of Los Angeles therein.

That defendants, T. R. Gabel, A. F. Kipper, Harry W. Hahn, Augustine S. Lockwood and Rupert W. Haserot are, and each of them is, and for a long time hitherto have been, citizens of the State of California and residents of Los Angeles County therein; that said defendant, A. F. Kipper, is doing business in said County and elsewhere under the name and style of Kipper & Company; and that defendant, Harry W. Hahn, is doing business in said County and elsewhere under the name and style of Harry W. Hahn Manufacturing Company; that defendant Augustine

S. Lockwood is doing business in said county and elsewhere under the name and style of Kozy Wing Auto Supply Company.

II.

That the matters herein in controversy are those arising under the patent laws of the United States, to wit, the infringement by the defendants of the certain Letters Patents of the United States issued to the plaintiff, Clarence D. Keller, and hereinafter more particularly described and set forth; matters wherein plaintiffs, having no plain, speedy or adequate remedy at law, invoke the equity jurisdiction and powers of this Court to the end that they may have the relief to which they are entitled.

III.

That the plaintiff, Clarence D. Keller, was on or before the 14th day of June, 1917, the true, original, first and sole inventor of certain new and useful improvements in "Winshields", not known or used before his invention or discovery thereof, or patented or described in any printed publication of the United States of America, or in any foreign country, before his invention or discovery thereof, or more than two years prior to his application for Letters Patent thereon in the United States, and not in public use or on sale in the United States of America for more than two years prior to his application for Letters Patent [2] thereon, hereinafter referred to, and not patented in any foreign country on an application filed more than twelve months prior to the filing of such application in the United States by said named

plaintiff or any person in privity with him, and not abandoned with him. And being so the inventor of said improvements in Windshields, said named plaintiff made application on the 14th day of June, 1917 to the Commissioner of Patents of the United States for Letters Patent, in accordance with the then existing laws in such case made and provided.

That on or about the 27th day of June, 1917, said plaintiff, Clarence D. Keller, pursuant to an agreement in writing between said named plaintiff, Clarence D. Keller, and the defendant, Rupert W. Haserot, a substantial copy of which is hereunto annexed, marked Exhibit "A" and made a part hereof, assigned to said defendant, Rupert W. Haserot, an undivided one-half (½) interest in and to said invention, and in and to the Letters Patent therefor, which by said application were applied for, and which said assignment was filed in the office of the Commissioner of Patents on or about the 13th day of November, 1917.

IV.

That on or about the 12th day of November, 1918, Letters Patent of the United States No. 1,284,357 entitled "Windshield", attested by the proper officer of the United States Patent Office, were duly granted, issued and delivered to the plaintiff Clarence D. Keller and the defendant Rupert W. Haserot; as will appear from the original Letters Patent or a duly certified copy thereof to be, by the plaintiffs, produced in Court.

V.

That on or about the 11th day of January, 1919,

by an instrument in writing for that purpose, the said defendant, Rupert W. Haserot, for a valuable consideration, then and there to him in hand paid, duly and regularly sold, transferred and assigned to said plaintiff, Clarence D. Keller an undivided one half (½) of all the right and title to said United States [3] Letters Patent, towit, Letters Patent bearing date of the 12th day of November, 1918 and No. 1,284,357; which said assignment was duly recorded in the office of the Commissioner of Patents at Washington, D. C., January 16th, 1919, in Liber V.106, Page 49.

That by reason of said assignment the said plaintiff Clarence D. Keller, became, ever since has been, and still is and at the time of the commencement of this action was, possessed of the whole right and title to said United States Letters Patent numbered and dated as aforesaid.

VI.

That plaintiff Clarence D. Keller was familiar with Patent Office practice and the interpretation of claims of Letters Patent only in a general way; that he believed that the claims of his Letters Patent No. 1,284,357 sufficiently and properly covered his invention described in said Letters Patent and the invention which he then believed, and still believes, to be his real invention; that said Clarence D. Keller did not know, until the matter was especially called to his attention, about the first of April, 1919, that the claims of said Letters Patent No. 1,284,357 were too limited in their scope to cover the invention which

plaintiff Keller believed to be his; and that prior to said time, about the first of April, 1919, plaintiff Keller believed, and acted upon the belief, that the claims of said Letters Patent did adequately and properly cover his invention. That immediately after being informed as aforesaid, he authorized the preparation of an application for reissue of said Letters Patent No. 1,284,357, to correct the insufficiencies and incompleteness of the claims of said Letters Patent, and to obtain claims of the proper character and scope to protect what he had before and did at that time believe to be his invention and what he had intended to secure, and thought he had secured by said Letters Patent No. 1,284,357. That the error in said Letters Patent No. 1,284,357 arose by reason of inadvertence, accident and mistake, and without any fraudulent or deceptive intent on the part of plaintiff Keller or any one in [4] privity with him. That said plaintiff Keller, then using due and reasonable diligence, and for good and lawful cause, did on the 22nd day of May, 1919, file in the United States Patent Office his petition and application for reissue of said Letters Patent No. 1,284,357, all in due form as provided by law, and did, at the same time, surrender to the United States Patent Office the said Letters Patent No. 1,284,357, and paid the fee required by law, and in all things complied with the requirements of law for such cases made and provided; and thereafter, after due proceedings had in the United States Patent Office, there was issued to said Clarence D. Keller, in accordance with the

corrected specification, and in accord with the law in such cases made and provided, and duly attested by the proper officer of the Patent Office, reissued Letters Patent No. 14,919 on July 20, 1920, all in due form of law; whereby there was granted and secured unto said Clarence D. Keller, his heirs and assigns, for the unexpired part of the term of seventeen years of said original Letters Patent No. 1,284,357 the full and exclusive right to make, use and sell to *other* to be used said invention, as set forth and claimed in said reissued patent, throughout the United States and the territories thereof; as will appear by a duly certified copy thereof to be produced in court.

And plaintiffs further state that during the period that intervened between the granting of said original Letters Patent No. 1,284,357 on November 12, 1919, and the application for the reissued Letters Patent on May 22, 1919, no intervening rights of any kind relative to said invention had accrued to any person whatsoever, as your plaintiffs truly believe.

V.

That plaintiff, Arthur C. Lillie, doing business under the name and style of Hartford Windshield Company, as aforesaid, is, and for more than one year last past has been, by virtue of written contracts with said patentee, the exclusive licensee of [5] said patentee to manufacture, use and vend said patented invention in and throughout that part of the United States of America on and lying west of the Mississippi River; as will appear from the original contracts to be produced in court.

VI.

That the inventions set forth, described and claimed in and by said Letters Patents, and each of them, are of great value and that plaintiffs, and particularly Arthur C. Lillie, doing business as the Hartford Winshield Company, have manufactured and supplied automobile windshields to the trade in large numbers embodying each and all of said inventions; that such windshields so manufactured and supplied to the trade by plaintiffs have been exceptionally popular; that the defendants have been notified of said Letters Patent by plaintiffs; and that the windshields so manufactured and sold by plaintiffs have been stamped with the word "Patented" together with the day and date thereof, or words to that effect.

VII.

That defendants, and each of them, except the defendant Haserot, well knowing the premises, and after due notice to them and each of them to plaintiff's rights in the premises, to-wit: in and to and under said recited Letters Patents, have, in fraud of Plaintiff's said rights, unlawfully and wrongfully conspired together with the purpose and intention deliberately to infringe said patents, and have pursuant to said unlawful purpose deliberately infringed the same in that they have made, sold and used, or caused to be made, sold and used, and continue to make, sell and use, or continue to cause to be made, sold and used, automobile windshields similar, or substantially similar to and embodying the inventions set forth and claimed in said Letters Patents and each of them; that in

pursuance of said conspiracy, and for the purpose of making the detection of the wrong and wrongdoer difficult, said defendants, except the defendant Haserot, conceived the plan of having one of them finance the manufacture of said articles; one or more of the remaining defendants, except the [6] defendant Haserot, to manufacture said devices and one or more of them to sell the same; that said defendants, except the defendant Haserot, have been and are now making and selling unto the trade such automobile windshields in large numbers, especially in the Southern District of California, and at divers other places throughout the United States, and have, and each of them has, except the defendant Haserot, thereby infringed upon said Letters Patents and upon each of said Letters Patents, and are now so doing and threatening and intending in the future so to do; and are thereby, as complainants are informed and believe, and without the license of plaintiffs and against their will, realizing large gains, profits and advantages, the exact amount of which is unknown to plaintiffs; and all of which acts are of great and irreparable injury and damage to plaintiffs and to their business and to the said Letters Patents; and for all of which plaintiffs have no adequate remedy at law.

VIII.

And plaintiffs further state that the several defendants, except the defendant Haserot, have conspired together, and have cooperated, in the manufacture and sale of said infringing windshields and that the production and sale of said infringing windshields have

been the result of the joint unlawful agreement and co-operation of the said several defendants, except the defendant Haserot, and that each one of the several defendants, except the defendant Haserot, has been interested, directly and indirectly in such manufacture and sale, and in the profits and gains derived therefrom.

IX.

Plaintiffs make Rupert W. Haserot a defendant herein, in compliance with a motion to dismiss the bill of complaint filed herein on the parts of the defendants named therein, and the order of this Honorable Court directing plaintiffs so to do.

Plaintiff alleges that said defendant Rupert W. Haserot pretends to have, or claims, some interest in said original Letters Patent, notwithstanding he assigned, as aforesaid, all of his [7] right, title and interest in and to the same and in and to the whole right thereof, but plaintiff alleges that the claim of said defendant is without basis of right, and that said defendant has no right, title or interest in or to said original patent or to said reissue patent, and did not, at the time of the commencement of this cause, nor does he now have any right, title or interest in or to the same or the invention represented thereby, or to any rents or profits issuing out of same. That said defendant is neither a proper nor a necessary party to this cause; nevertheless, in conformity to the order aforesaid, plaintiffs make him a part hereto as a defendant to the end that whatever claims he may have he may, at his election, assert.

WHEREFORE your plaintiffs pray:

1. That an accounting may be taken of such profits and damages as herein alleged, and that the defendants, and each of them, be ORDERED, ADJUDGED AND DECREED to pay to, and that the plaintiffs recover from said defendants and each of them, all of the profits, gains and advantages realized by defendants from said infringing acts and all damages sustained by plaintiffs by reason thereof.

2. That defendants, and all persons assisting or in privity with them, be enjoined both during the pendency of this suit, and permanently, from manufacturing, selling or using, or causing to be manufactured, sold or used, any automobile windshield substantially similar to those set forth and claimed in said Letters Patents, or in any of them, or any device embodying or containing any of said inventions, and from directly or indirectly infringing upon either or any of the said Letters Patents in any manner whatsoever.

3. That plaintiffs have judgment against defendants and each of them for their costs and disbursements herein, and for such other, further or different relief as to this Court may seem proper and be in accord with equity and good conscience. [8]

May it please your Honors to grant unto plaintiffs a writ of subpœna to be directed to said defendant Rupert W. Haserot, therein and thereby commanding him at a certain time, and under a certain penalty therein to be named, to be and appear before your Honors in this Honorable Court then and there to answer all and singular the matters aforesaid, but

not under oath, answer under oath being hereby expressly waived, and to stand, and to abide and perform such other and further orders as to your Honors shall seem meet.

ARTHUR C. LILLIE,
CLARENCE D. KELLER,
Plaintiffs.

By JAMES E. KELBY,
GORDON LAWSON,
Their Solicitors.

[9]

State of California,
County of Los Angeles,—ss.

Arthur C. Lillie, being first duly sworn according to law deposes and says that he is one of the plaintiffs in the above-entitled suit, and has read the foregoing Amended Bill of Complaint and knows the contents thereof, and the same is true of his own knowledge and except as to such matters and things as are therein stated on information and belief and as to such matters he believes the same to be true.

ARTHUR C. LILLIE,

Subscribed and sworn to before me this 28th day of June, 1921, A. D.

[Seal] LOUISE, MOISANT,

Notary Public in and for the County of Los Angeles State of California. [10]

EXHIBIT "A".

AGREEMENT.

THIS AGREEMENT, made and entered into by

and between Clarence D. Keller, party of the first part, and Rupert W. Haserot, party of the second part, both of Los Angeles, California:

WITNESSETH, that whereas the party of the first part has invented certain new and useful improvements in WINDSHIELDS for automobiles, for which he is to make application for United States letters patent; and whereas both parties are desirous of exploiting this invention to the best possible advantage;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter stated, the parties agree as follows:

I. The party of the first part agrees to assign, transfer and convey an undivided one-half (½) interest in said invention and the United States patent to be obtained therefor to the party of the second part.

II. The party of the second part agrees to pay the expenses of securing said United States patent, and, after said patent has been granted, to pay to the party of the first part two hundred and fifty dollars ($250.00) cash; and he further agrees to bear the expenses of putting said invention on the market.

III. It is distinctly understood by both parties to this contract that the party of the first part reserves the exclusive right to manufacture said invention in his place of business in Los Angeles, and that any profits derived therefrom are to be entirely his own; but that the net profits derived from the manufacture and sale of said invention by the party of the second

part are to be divided equally betwen said parties to this contract, share and share alike.

IV. The party of the second part agrees to put out and sell a minimum number of twenty-five (25) sets of said invention per month, and in case he should fail, for any [11] reason, to manufacture and sell said minimum number of twenty-five sets per month, he hereby agrees to re-assign his undivided one-half (½) interest in said invention and in said patent to the party of the first part on the demand of said party of the first part; said demand not to be made prior to a year from the date of this contract.

V. It is distinctly understood by both parties to this contract that the second party hereby expressly agrees not to sell, assign or transfer his interest in said patent, or any part thereof, or to grant licenses under said patent, without the written consent of the said first party.

WITNESS our hands and seals this 18th day of July, 1917.

CLARENCE D. KELLER,
Party of the First Part.
RUPERT W. HASEROT,
Party of the Second Part.

Subscribed to before me this 18th day of July, 1917.
[Seal] JOSIAH L. GELLER,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Original. In Equity—No. E. 86. In the United States District Court in and for the Southern District of California, Southern Division. Clar-

ence D. Keller, and Arthur C. Lillie, doing business as Hartford Windshield Company, Complainants, vs. Adams-Campbell Company, Inc., a corporation; T. R. Gabel; A. F. Kipper, individually, and A. F. Kipper, doing business as Kipper & Company; Harry W. Hahn, individually, and Harry W. Hahn, doing business as Harry W. Hahn Manufacturing Company; and Augustine S. Lockwood, individually and Augustine S. Lockwood, doing business as Kozy Auto Supply Company, and Rupert W. Haserot, Defendants. Amended Bill of Complaint. Dated June ——, 1921. Received a copy of the within Amended Bill of Complaint, this —— day of June, 1921. Ford W. Harris, Solicitor for Defendants. James E. Kelby and Gordon Lawson, Attorneys-at-Law, 929 Story Building, Los Angeles, Calif. Solicitors for Plaintiffs. Filed Jul. 1, 1921. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [12]

IN EQUITY—No. E-86.

CLARENCE D. KELLER et al.,

Complainants,

vs.

ADAMS-CAMPBELL COMPANY, INC., et al.,

Defendants.

Answer to Amended Bill of Complaint.

To the Honorable the Judges of the District Court in and for the Southern District of California, Southern Division.

The original defendants, being the present defendants, with the exception of Rupert W. Haserot, answering the plaintiffs amended bill of complaint deny:

I.

That Arthur C. Lillie is, or ever was, doing business anywhere under the firm name and style of Hartford Windshield Company; or that the said Arthur C. Lillie has ever filed a certificate to that effect with the clerk of the County of Los Angeles, or elsewhere.

II.

That the cause of action recited in said complaint is such that the plaintiffs have no adequate remedy at law.

III.

That the plaintiff Clarence D. Keller was the true, original, first or sole inventor of any improvements in windshields or that he ever made any application for United States patent thereon.

IV.

That on the 12th day of November, 1918, or on any other date, letters patent entitled "Windshield" ever issued to the plaintiff Clarence D. Keller or the defendant Rupert W. Haserot or either or both of them.

V.

That the said Rupert W. Haserot, for a valuable consideration, by an instrument in writing, ever sold, transferred or assigned his interests to the plaintiff Clarence D. Keller or that [13] if such an instrument were executed that it was recorded as required by law or that by reason of said assignment, or for

any other reason, the said Clarence D. Keller ever became possessed with the whole right, title or interest to letters patent 1,284,357.

VI.

That the plaintiff Clarence D. Keller failed to obtain in letters patent 1,284,357, through any inadvertence, accident or mistake or without any fraudulent or deceptive intent, a patent which fully protected his invention; or that the said Clarence D. Keller did, in compliance with the statutes made and provided reissue the said letters patent 1,284,357, as reissue patent 14,919; or that said reissue patent 14,919, was properly issued to said Keller or at all.

VII.

That the plaintiff Arthur C. Lillie has any title in said letters patent or title sufficient to qualify him to be a plaintiff herein.

VIII.

That the invention disclosed and claimed in said letters patent is of great or any value; or that the plaintiffs have supplied to the trade any windshields embodying said invention; or that the windshields so supplied have been popular; or that the original defendants have been notified of said letters patent by the plaintiffs; or that the plaintiffs have properly marked said windshields in accordance with the law made and provided.

IX.

That the original defendants have in any way infringed the rights of the plaintiffs by making or selling windshields infringing said patents; or that the

original defendants threaten to so infringe or that the original defendants have made any profit whatever thereon.

X.

That the defendants have conspired together to the the damage of the plaintiffs. [14]

BUT ON THE CONTRARY ORIGINAL DEFENDANTS, FURTHER ANSWERING, allege that said purported letters patent—original 1,284,357 and reissue 14,919—as set forth in the bill of complaint are now void and of no force and effect for each and any of the following reasons:

(a) That for the purpose of deceiving the public the description and specification filed by the said alleged patentee, Clarence D. Keller, for said purported letters patent were made to contain less than the whole truth relative to his invention or discovery, or more than was necessary, to produce the desired effect.

(b) That said alleged patentee of said purported letters patent, as set forth in the bill of complaint, surreptitiously and unjustly obtained a patent or patents for that which was in fact invented by others, who were using reasonable diligence in adapting and perfecting same, namely by the defendant Kipper, who resides in Los Angeles, California, and by M. F. Wildau residing in Los Angeles, California, Ambrose Finnegan, residing in Fayette, Iowa, Allen F. Kipper residing in Los Angeles, California.

(c) That the alleged invention described and claimed in said purported letters patent had been pat-

ented prior to the alleged invention or discovery by the said Keller, or for more than two years prior to his alleged application for patent, and that the names of said patentees and the dates of said patents, and when granted are as follows:

U. S. LETTERS PATENTS.

John Vickery	Oct. 29, 1872	Patent	132,633
Peter Weiderer	April 17, 1888	"	381,452
Albert W. Mann	Feb. 9, 1904	"	751,526
Charlie G. Olson	Feb. 21, 1905	"	783,383
William T. Jolliffe	May 20, 1913	"	1,062,402
Moses Tischler	Sept. 15, 1914	"	1,110,973
Joseph A. LaBonte	May 23, 1916	"	1,184,652
Arthur C. Freeman	May 8, 1917	"	1,225,608

[15]

John O. Hofbauer	Feb. 27, 1912	Patent	1,018,973
C. F. Weinsinger	Mar. 20, 1917	"	1,219,513
Charles R. Clark	Apr. 21, 1914	"	1,093,974
Daniel O. Baldwin	Nov. 18, 1913	"	1,078,765

FRENCH PATENTS.

Societe Beaurain & Holleville	Oct. 19, 1912	"	444,525
M. M. Delamere et Roget	Sept. 10, 1914	"	470,413
Societe E. Moreau	Dec. 11, 1913	"	460,778

BRITISH PATENTS.

John F. Sargeant	May 6, 1897	"	11,325
Aiexander Nicholson	Nov. 4, 1910	"	25,569

and in other patents not now known to the original defendants.

(d) That the said alleged inventions are without utility.

(e) That the said alleged inventions are not the sole invention of the said Keller but were the result of joint invention with another.

(f) That the alleged invention of said purported letters patent, in view of the state of the art as it existed at the date of the alleged invention, did not involve invention or contain any patentable novelty, but disclosed a mere adaptation of well known devices to the required uses, involving mere mechanical skill.

(g) That the said alleged patentee was not the original or first inventor or discoverer of any material or substantial part of the things described and claimed in said purported letters patent but that long before his alleged invention thereof the same was well known to others, and used by them, to-wit: the original defendants herein, residing in the city of Los Angeles, California, and used by them in said city.

(h) That original letters patent 1,284,357 have been surrendered to the Patent Office as a condition precedent for reissue and that said letters patent are without present force or effect.

(i) That the specification of said reissue patent 14,919 [16] by reason of ambiguity and a needless multiplication of nebulous claims is calculated to deceive and mislead the public.

(j) That the alleged patentee failed to file in the Patent Office a written description of his alleged invention in such full, clear, concise and exact terms as

to enable any person skilled in the art or science to which it appertains, or to which it is most nearly connected, to make, construct or use same, and that he further*ther* failed to explain the principle thereof and the best mode in which he has contemplated applying the invention so as to distinguish it from other inventions.

(k) That the alleged patentee of said purported letters patent has failed to particularly point out and distinctly claim the part, improvement, or combination which he claimed as his invention or discovery.

(l) That the said alleged improvements were abandoned by said alleged patentee.

(m) That the alleged invention of said purported letters patent were abandoned and passed into the possession of the public before the date or dates of the alleged infringement charged in the bill of complaint, or that the alleged inventions were abandoned to the public prior to the filing date of the alleged application upon which said purported letters patent in suit are alleged to have been granted.

(n) That the alleged invention set forth in letters patent at issue were constructively abandoned by failure to apply for a patent within the time allowed by statute.

(o) That the alleged invention described and claimed in reissue patent 14,919 is not substantially the same invention as described in the original application for original patent 1,284,357, but that after the alleged patentee made oath to his original application material additions thereto, variations and changes

therefrom were made, and that new matter was unlawfully introduced into said original or said reissue patent. [17]

(p) That the claims of the purported letters patent and each of them does not cover a valid patentable combination but embraces a mere aggregation of elements, forming no new combination and having no cooperation in the patentable sense.

(q) That subsequent to the issue of the original letters patent 1,284,357, and previous to the application of reissue patent 14,919, certain persons, relying upon the claims of said original letters patent 1,284,357 as particularly pointing out and distinctly claiming the invention of said Clarence D. Keller, entered into the business of making and selling windshields and that intervening rights therefore arose, and that the names and places of business of said persons are as follows:

Michael Francis Wildau of Los Angeles, California
David Tribe " " " "
Ernest F. Kohn " " " "
Ernest C. Hillman " " " "

the original defendants herein all doing business in the said City of Los Angeles, and others at present unknown to the defendants.

(r) That the devices shown in said purported letters patent are inoperative for the purposes set forth.

(s) That the Commissioner of Patents exceeded his legal authority in issuing reissue letters patent 14,919.

Answering further, the original defendants allege that the plaintiffs have been guilty of acts which debar them from seeking relief in a court of equity.

Answering still further, the original defendants allege that the plaintiffs are debarred from seeking relief in this court due to laches.

Answering still further, the original defendants allege that none of the plaintiffs herein have any title to any of the purported letters patent set forth in said bill of complaint or that they have sufficient title to maintain this suit.

Answering still further, the original defendants allege that the plaintiffs are not entitled to recover damages as the [18] plaintiffs have made and sold devices since the issue of said patents which were not properly marked in accordance with the statutes.

Answering still further, the original defendants deny that they have infringed on the plaintiffs patents.

Answering still further, the original defendants deny the equity of plaintiffs bill of complaint and allege that the plaintiffs are not entitled to an injunction, nor to damages, nor to an accounting for profits, nor to a decree holding that the legal title to the purported letters patent is vested in the plaintiffs, nor to a decree holding that said letters patent, or any of the claims thereof, are valid or infringed by any defendant, nor to any other relief prayed in said bill of complaint, all of which matters the defendants are ready and willing to aver and maintain and prove to this Honorable Court.

And these original defendants pray to be dismissed

with their costs and charges in this behalf most wrongfully sustained.

FRANK L. A. GRAHAM,
FORD W. HARRIS,

Solicitors and Counsel for all Defendants Except Rupert W. Haserot.

[Endorsed]: No Equity—No. E-86. United States District Court Southern District of California Southern Division. Clarence D. Keller, and Arthur C. Lillie, doing business as Hartford Windshield Company, Plaintiffs vs. Adams-Campbell Company, Inc., et al., Defendant. In Equity. Answer to Amended Bill of Complaint. Received copy of within Answer this 14 day of July, 1921. Gordon Lawson, James E. Kelby, Attorneys for Pl. Frank L. A. Graham, Ford W. Harris, Higgins Building, Los Angeles, Cal., Attorneys for Defendants. Filed Jul. 15, 1921. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. [19]

IN EQUITY—No. E-86.

CLARENCE D. KELLER et al.,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, INC., et al.,

Defendants.

Answer of Defendant Rupert W. Haserot to Plaintiffs' Amended Bill of Complaint.

Comes now Rupert W. Haserot, one of the above-

entitled defendants, and for himself alone for answer to plaintiffs' amended bill of complaint on file herein admits, denies and alleges as follows, to wit:

I.

Defendant admits all of the allegations contained in Paragraph I of plaintiffs' amended complaint.

II.

Defendant denies the allegations contained in Paragraph II of plaintiffs' amended complaint, that he has at any time, or ever, or at all, attempted to infringe the patent set forth in plaintiffs' amended bill of complaint.

III.

The defendant admits all of the allegations contained in Paragraph III of plaintiffs' amended complaint.

IV.

The defendant admits all of the allegations contained in Paragraph IV of plaintiffs' amended complaint.

V.

The defendant admits the allegation contained in Paragraph V of plaintiffs' amended complaint, that on or about the 11th day of January, 1919, the above-entitled defendant, Rupert W. Haserot, for a valuable consideration, transferred and assigned to the plaintiff, Clarence D. Keller, his undivided one-half interest in and to all of the right and title to said United States Letters Patent, to wit, Letters Patent bearing date the 12th day of November, 1918, but defendant denies that the said plaintiff Clarence D. Keller then became, or

ever since has been, or still is, or at the time of the commencement of this action was, possessed of the whole right or title to said United States [20] Letters Patent numbered and dated as aforesaid. In this connection the defendant alleges that said assignment of defendant Haserot's undivided one-half interest in and to the said letters patent was obtained by fraud, and that said defendant Rupert W. Haserot has brought suit in the Superior Court of the State of California, in and for the County of Los Angeles against the said Clarence D. Keller for the rescission of said assignment and for a reconveyance of the undivided one-half interest in and to the said Patent; that said action has been tried by said Superior Court and a minute Order of judgment has been entered, decreeing that said defendant Rupert W. Haserot was entitled to a rescission of the said assignment at the hands of the said plaintiff Clarence D. Keller.

VI.

The defendant admits the allegations contained in Paragraph VI of plaintiffs' amended complaint.

VII.

The defendant admits all of the allegations contained in Paragraph V beginning on page six of plaintiffs' amended complaint.

VIII.

The defendant admits all of the allegations contained in Paragraph VI on page seven of plaintiffs' amended complaint.

IX.

The defendant admits all of the allegations con-

tained in Paragraph VII of plaintiffs' amended complaint.

X.

The defendant admits all of the allegations contained in Paragraph VIII of plaintiffs' amended complaint.

XI.

The defendant denies the allegation contained in Paragraph IX of plaintiffs' amended complaint, that the defendant Haserot pretends to have an interest in the said patents, and denies the allegation of plaintiff contained in said Paragraph IX that the claim of the said defendant Rupert W. Haserot to the said patent is without basis, or right, or title, or that the said defendant Haserot has no right or title or interest in or to the original patent, or to the said reissued patent; and denies that [21] the said defendant Haserot did not at the time of the commencement of this cause, or does not now have, any right or title or interest in or to the inventions represented thereby, or to any of the rents or profits issuing out of the same. In this connection said defendant alleges that he is the owner of an undivided one-half interest in and to the said patent rights claimed therein by the said Clarence D. Keller, and that all of his said reights in and to the said patent claim are now in process of litigation in the Superior Court of Los Angeles County, State of California; that said Court has by Minute Order decreed that the said defendant Rupert W. Haserot is the owner of an undivided one-half interest in and to the said patent rights.

WHEREFORE defendant Rupert W. Haserot prays that plaintiff may have such relief against the other defendants in this action as he may be entitled to, and that this Court may decree that said defendant Haserot is the owner of an undivided one-half interest in and to the said patents; for his costs of suit herein incurred and expended, and for such other and further relief as to this Court may seem just in the premises.

W. C. SHELTON,

Attorney for the defendant Rupert W. Haserot. [22]

State of California,
County of Los Angeles,—ss.

Rupert W. Haserot, being first duly sworn according to law deposes and says: That he is one of the defendants in the foregoing Answer of Defendant Rupert W. Haserot's to Plaintiffs' Amended Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters and things as are therein stated on information and belief and as to such matters he believes the same to be true.

RUPERT W. HASEROT.

Subscribed and sworn to before me this 3d day of August, 1921.

[Seal] W. C. SHELTON,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsement]: In Equity—No. E-86. In the United States District Court in and for the Southern

District of California. Clarence D. Keller and Arthur C. Lillie, etc., Plaintiffs, vs. Adams-Campbell Company, Inc., a corporation et al, Defendants. Answer of Defendant Rupert W. Haserot to Plaintiffs' Amended Bill of Compalint. W. C. Shelton, Attorney for Defendant Rupert W. Haserot. Rec'd copy of the within answer this 4th day of August, 1921. James E. Kelby & Gordon Lawson, Attys for Plaintiffs. W. C. Shelton, Attorney at Law, 1214-18, Washington Building, 62606 Main 4295 Los Angeles, Cal. Filed Aug. 8, 1921. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. [23]

IN EQUITY—No. E-86.

CLARENCE D. KELLER, et al.,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, etc., et al.,

Defendants.

Final Decree.

This cause came on to be heard at this term and was argued by counsel and upon consideration thereof, it was Ordered, Adjudged and Decreed that the bill of complaint herein be and the same is hereby dismissed, with costs to the defendant to be taxed.

TRIPPET,
District Judge.

Approved as to form under Rule 45.

. . . . . .

. . . . . .

Decree entered and recorded Feb. 11, 1922.

CHAS. N. WILLIAMS,
Clerk.

By Louis J. Somers,
Deputy Clerk.

[Endorsement]: No. E-86. United States District Court, Southern District of California. Clarence D. Keller, et al., Plaintiff, vs. Adams-Campbell Company, etc., et al., Defendant. In Equity. Final Decree. Filed Feb. 11, 1922. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy. Frank L. A. Graham, Ford W. Harris, Higgins Building, Los Angeles, Cal., Attorneys for Defendants. Eq. Jr. 10/442. [24]

In the United States District Court, in and for the Southern District of California, Southern Division.

IN EQUITY—No. E-86.

CLARENCE D. KELLER and ARTHUH C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, INC., (a Corporation); T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Busi-

ness as KIPPER & COMPANY; HARRY W. HAHN Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Defendants.

Petition for Order Allowing Appeal.

To the Honorable Court, above entitled:

The above-named plaintiffs, Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Company, conceiving themselves aggrieved by the decree filed and entered on the 11th day of February, 1922, in the above-entitled cause, do hereby appeal therefrom to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons and on the grounds specified in the Assignment of Errors, which is filed herewith, and prays that this appeal may be allowed, that a citation issue as provided by law, and that a transcript of the record, proceedings, exhibits and papers, upon which said decree was made and entered as aforesaid, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, under the rules of said court in such cases made and provided, and your petitioners further [25] pray that the proper order relating to the required security to be required of him be made.

JAMES E. KELBY,
CHAS. E. TOWNSEND,
Solicitors for Plaintiffs.

Dated: March ——, 1922.

ORDER ALLOWING APPEAL.

Appeal allowed upon giving bond as required by law for the sum of ——— ($250).

TRIPPET,
District Judge.

Dated: March 9, 1922.

[Endorsed]: No. E-86. In the District Court of the United States, Southern District of California, Southern Division. Clarence D. Keller, et al., Plaintiffs, vs. Adams-Campbell Company, et al., Defendants. Petition for Order Allowing Appeal & Order. Received copy of the within Petition for Order Allowing Appeal this 9 day of March, 1922. Graham & Harris, Attorneys for Defendants. Filed Mar. 9, 1922. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Chas. E. Townsend, Kelby & Lawson, Suite 929, Story Building, Sixth and Broadway. Phone 11425, Bdwy. 1487, Los Angeles, California, Attorneys for Plaintiff. [26]

In the United States District Court, in and for the Southern District of California, Southern Division.

IN EQUITY—No. E-86.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, INC. (a Corporation); T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY; HARRY W. HAHN Doing Business as HARRY W. HAHN MAUNFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Defendants.

Order Allowing Withdrawal of Original Exhibits.

On motion of James E. Kelby, solicitor for plaintiffs above-named, on good cause appearing therefor, it is by the court now ordered:

That all the original exhibits in the above-entitled case, documentary and otherwise, both plaintiffs' exhibits and defendants' exhibits be, and they are hereby allowed to be withdrawn from the court in the said case and transmitted by the clerk of this court

to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit of San Francisco, California, as part of the record on appeal for the plaintiffs herein to the said Circuit Court of Appeals; said original exhibits to be returned to the file of this court upon the [27] determination of said appeal by the said Circuit Court of Appeals.

TRIPPET,
Judge.

Dated: March 9, 1922.

[Endorsed]: No. E-86. In the District Court of the United States, Southern District of California, Southern Division. Clarence D. Keller, et al., Plaintiffs, vs. Adams Campbell Company, et al., Defendants. Order Allowing Withdrawal of Original Exhibits. Received copy of the within Order Allowing Withdrawal of Original Exhibits this 9 day of March, 1922. Graham & Harris, Attorneys for Defendants. Filed Mar. 9, 1922. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Chas. E. Townsend, Kelby & Lawson, Suite 929, Story Building, Sixth and Broadway, Phone 11425, Bdwy. 1487, Los Angeles, California, Attorneys for Plaintiffs. [28]

No. ——

CLARENCE D. KELLER et al.,
Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, INC., et al.,
Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Company, as principals, and the American Surety Company of New York as surety, are held and firmly bound under the above-named appellees, Adams-Campbell Company, Inc., a Corporation; T. R. Gabel, A. F. Kipper, individually, and A. F. Kipper, doing business as Kipper & Company; Harry W. Hahn, doing business as Harry W. Hahn Manufacturing Company; and Augustine S. Lockwood, individually and Augustine S. Lockwood, doing business as Kozy Wing Auto Supply Company, in the sum of Two Hundred Fifty Dollars ($250.00), in lawful money of the United States of America, for the payment of which well and truly to be made unto the said appellees, their successors and assigns, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents, conditioned that

WHEREAS, on the 10th day of March, 1922, in the District Court of the United States, for the Southern District of California, Southern Division, in a suit pending in that court, wherein Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Company, were complainants, and the said Adams-Campbell Company, Inc., a Corporation; T. R. Gabel, A. F. Kipper, individually, and A. F. Kipper, doing business as Kipper [29] & Company; Harry W. Hahn, doing business as Harry W. Hahn

Manufacturing Company; and Augustine S. Lockwood, individually and Augustine S. Lockwood, doing business at Kozy Wing Auto *A*upply Company, *wer* defendants, numbered on the equity docket as E-86 a decree was rendered against the said Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Company, plaintiffs, and

WHEREAS, the said Clarence*n* D. Keller, and Arthur C. Lillie, doing business as Hartford Windshield Company, having obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the said decree, which said decree was entered in the United States District Court on the 11th day of February, 1922, and an appeal allowed, and citation directed to the said appellees and each of them, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit.

NOW, THEREFORE, the condition of this obligation is such that if the above-named appellants shall prosecute said appeal to effect and answer all costs, if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

HARTFORD WINDSHIELD COMPANY,
By A. C. LILLIE.
AMERICAN SURETY COMPANY OF NEW YORK,
By F. L. HEMMING,
Resident Vice-President.
[Seal] Attest: D. W. PORTER,
Resident Assistant Secy.

Premium charged for this bond is $10.00 per annum.

State of California,
County of Los Angeles,—ss.

On this 10th day of March A. D. 1922, before me, Helen R. Durrow, a Notary Public in and for Los Angeles County, State of California, residing therein, duly commissioned and sworn, personally appeared F. L. Hemming personally known to me to be the [30] Resident Vice-President and D. W. Porter personally known to me to be the Resident Assistant Secretary of the American Surety Company of New York, the Corporation described in and that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] HELEN R. DURROW,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires July 13, 1924.

State of California,
County of Los Angeles,—ss.

On this the 10th day of March, in the year nineteen hundred and twenty-two, A. D. before me, Alfred C. Ellmore, Jr. a Notary Public in and for the said County of Los Angeles, State of California, residing

therein, duly commissioned and sworn, personally appeared A. C. Lillie known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me *the he* executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate *x* first above written.

[Seal] ALFRED C. ELLMORE, Jr.,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires Feb. 7, 1926.

I hereby approve the foregoing bond

Dated the 10 day of Mar. 1922.

TRIPPET,

Judge.

Examined and recommended for Approval as provided in rule 29.

KELBY & LAWSON

By ALFRED C. ELLMORE, Jr.

Judge or Attorney [31]

[Endorsed]: No. E-86—100858. In the District Court of the United States, Southern District of California, Southern Division. Clarence D. Keller, et al., Plaintiffs, vs. Adams-Campbell Company, et al., Defendants. Bond on Appeal. Filed Mar. 10, 1922. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Kelby & Lawson, Suite 929, Story Building, Sixth and Broadway, Phone 11425, Bwdy. 1487 Los Angeles, California. Eq R BK. Attorneys for ——— Parker & Stone Co., Law Printers, 232 New High Street, L. A. [32]

No. E–86.

CLARENCE D. KELLER, et al.,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, Inc. et al.,

Defendants.

Assignment of Errors.

Now come Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Company, plaintiffs in the above cause in the court below, and appellants herein, by James E. Kelby, Esq., and Chas. E. Townsend, Esq., their solicitors and counsel, and say that in the record and proceedings in the said cause in the said court below there is manifest error, and they particularly specify as the errors upon which they will rely and which they will urge upon their appeal in the above-entitled cause:

(1) That the District Court of the United States for the Southern District of California, Southern Division, erred in holding that Claims 1, 2, 8, 17, 21 and 23, (being the only claims declared upon by plaintiff) of the Keller Re-Issue Patent in suit and none of them *was nor* were infringed by the defendants, or any of them.

(2) That the District Court of the United States for the Southern District of California, Southern Division, erred in holding that these claims, and all of them, were void by reason of intervening rights.

(3) That the District Court of the United States for

the Southern District of California, Southern Division, erred in holding that the acts of defendants created intervening rights as against the plaintiffs.

(4) That the District Court of the United States for the Southern District of California, Southern Division, erred in holding that the acts of defendants created an estoppel in their favor as against plaintiffs.

(5) That the District Court of the United States for the [33] Southern District of California, Southern Division, erred in holding that the said Keller Re-Issue Patent in suit was re-issued without warrant of law.

(6) That the District Court of the United States for the Southern District of California, Southern Division, erred in holding that the defendants' Bracket is not an equivalent of the Bracket in plaintiffs' original patent.

(7) That the District Court of the United States for the Southern District of California, Southern Division, erred in the statement of law regarding equivalency in the statement that: "The defendants' bracket is not an equivalent of the bracket in plaintiffs' original patent, because it does not perform the same functions in the same way but it performs the function of holding in the glass in an entirely different way."

(8) That the District Court of the United States for the Southern District of California, Southern Division, erred in holding that the defendants' device as an entirety was not the equivalent of the patented device.

(9) That the District Court of the United States for the Southern District of California, Southern Division, erred in that the Decree was contrary to the evidence.

(10) That the District Court of the United States for the Southern District of California, Southern Division, erred in dismissing the Bill.

In order that the foregoing Assignments of Error may be and appear of record, the plaintiffs present the same to the Court, and pray that such disposition be made thereof as in accordance with the law and statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

JAMES E. KELBY,
CHAS. E. TOWNSEND,
Solicitors for Plaintiffs.

Dated: March 9th, 1922. [34]

[Endorsed]: No. E-86. In the District Court of the United States, Southern District of California, Southern Division. Clarence D. Keller, et al., Plaintiffs, vs. Adams-Campbell Company et al., Defendants. Assignment of Errors. Received copy of the within Assignment of Errors this 9th day of March, 1922. Graham & Harris, Attorney for Defendants. Filed Mar. 9, 1922. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Chas. E. Townsend, Kelby & Lawson, Suite 929, Story Building, Sixth & Broadway, Phone 11425, Bdwy. 1487, Los Angeles, California, Attorneys for Plaintiffs. [35]

In the United States District Court in and for the Southern District of California, Southern Division.

IN EQUITY—No. E–86.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, INC. (a Corporation); T. R. GABEL, A. F. KIPPER, Individually, and A. F. Kipper, Doing Business as KIPPER & COMPANY; HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Defendants.

Notice of Lodgment of Condensed Statement of Evidence for Use on Appeal.

To the Above-named Defendants and to Messrs. Graham & Harris, Their Attorneys:

You are hereby notified of the lodgment this day of the within Condensed Statement of Proceedings on Final Hearing with the Clerk of the above-entitled Court, and that, pursuant to Equity Rule 75, on the 11th day of April, 1922, at the hour of 10 o'clock

A. M. or as soon thereafter as counsel may be heard at the Chambers of the Trial Judge in the Post-Office Building in the City of Los Angeles, County of Los Angeles, State of California, we shall ask the Court or Judge to approve the said statement.

JAMES E. KELBY,
CHAS. E. TOWNSEND,
Attorneys for Plaintiffs.

Dated March ——, 1922. [36]

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In the District Court of the United States for the Southern District of California, Southern Division.

(Hon. OSCAR A. TRIPPET, Judge Presiding.)

No. E-86—EQUITY.

On Keller Re-Issue Patent. No. 14919. Dated July 20, 1920. For Windshield.

CLARENCE D. KELLER et al,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, Inc., et al,

Defendants.

Condensed Record of Proceedings on Final Hearing Under Equity Rule 75.

APPEARANCES.

JAMES E. KELBY, Esq., and CHARLES E. TOWNSEND, Esq., for Plaintiffs.

Messrs. GRAHAM & HARRIS, for Defendants.

Trial had in open court beginning Tuesday, October 4, 1921, to Friday, October 7, 1921, inclusive.

Opening statement by counsel omitted.

Plaintiff declares on claims 1, 2, 8, 17, 21 and 23.

STIPULATIONS.

Stipulated that uncertified printed copies of patents may be used in lieu of originals with dates of filing applications and dates of issuance stipulated as correct; that Arthur C. Lillie, plaintiff, has been and is doing business under firm name of Hartford Wind-

shield Company, and that he has filed [40] certificate to that effect with Clerk of Los Angeles County; that the Hartford Windshield Company is a licensee under the patent in suit; that an assignment made by Haserot to Keller, was recorded in the Patent Office, and properly alleged in bill of complaint; that plaintiff's Exhibit 2 is the device that defendants were manufacturing.

Plaintiff offers Keller Patent Re-issue No. 14919, dated July 20, 1920, as Plaintiff's Exhibit No. 1.

Plaintiff offers windshield wing device stipulated as manufactured by defendants as Plaintiff's Exhibit No. 2 (Tr. pp. 8, 9).

Testimony of Arthur C. Lillie, for Plaintiff.

ARTHUR C. LILLIE, called as witness for plaintiffs, testifies:

Name is Arthur C. Lillie; lives in Los Angeles; business is manufacturing automobile accessories, principally windshields, under name of Hartford Windshield Company. Have been manufacturing windshields in Los Angeles for about ten years, and have been sole proprietor since March, 1918. Witness has been manufacturing windshield wings according to the sample and standard of Plaintiff's Exhibit No. 3.

Witness first became familiar with windshield wings in the summer of 1917, and prior to that time had never seen a windshield wing; prior to the summer of 1917, witness had never heard or seen an automobile windshield wing such as is here, or any other form. If there had been such a device, witness says he prob-

(Testimony of Arthur C. Lillie.)

ably would have heard of it. There were only three manufacturers of windshields of any consequence on the Pacific Coast in 1912, 1913 and 1914, and "naturally we always know what our competitors are [41] making, and there was no such thing on the market at that time."

Q. Where and under what circumstances did you first discover this wing, according to this device?

A. Mr. Keller had a little windshield place on the corner of Pico and Los Angeles Streets, and being in a similar line of business, although his business was very small, we were friendly, and once in a while I would step in and see him just going by, you know. And Mr. Keller showed me a windshield wing that he had manufactured, and he had it mounted on a piece of pipe up on a—sort of stand, and he sort of got me by the sleeve and said, "Come in here and I will show you something." And I went in with him and I looked at it, and I said, "What is that?" He said, "That is a windshield wing." And he went on to describe how he was going to put this thing on this roadster that he had, and I laughed at him. And of course he went on and made them anyway, and he showed it again to me two or three times afterwards. In fact, I think if I had liked the device at that time, being in a better position to market such a device, having a better means of distribution, which Mr. Keller, of course, was aware of, I think that he would have made me some sort of proposition to make the thing or sell it, but it looked silly to me; in fact I

(Testimony of Arthur C. Lillie.)

told him that the people wouldn't buy that sort of thing. They had already mirrors and spotlights on the windshield posts and I didn't think they would buy it. And so shortly after that, possibly thirty days or two weeks, I can't be exact, but I know it was a very short time after I had this conversation with Mr. Keller, I had made a contract with a man by the name of Johnston in Chicago, on a curtain window, and this man Johnston was looking around for different kinds of automobile accessories to take back to Chicago to manufacture, and he came [42] back here from Chicago in the latter part of June, 1917. My contract with him was made in June, 1917. And he went down to see Mr. Keller about this thing. I told him that Keller had the thing down there; that I didn't think much of it, but to go down there and look at it. So he went down; and Mr. Johnston,—he was a regular promoter; he wanted a pair of wings, but he didn't want to pay Keller for them. And he came back and said that Keller wouldn't give him a pair of wings to see what he could do with them. And I afterwards saw Keller, and Keller said that he wouldn't pay him for them. So that is why I know it was in July of 1917, because Johnston went home at that time, and that is the first one that I saw, and that is why it was brought so forcibly to my attention. (Tr. pp. 11-15.)

Q. When, if at all, did you become connected with the device in a marketing way under a license, or otherwise?

(Testimony of Arthur C. Lillie.)

A. Well, Mr. Keller kept on making a few. I was selling tonneau windshields, and naturally I would see his pair of wings here and there in some of my customers' places. you know, and they didn't go very good, because they were absolutely new, and it didn't interest me at all. That was my view of it. But finally they began to buy more of them on the street, and it began to dawn on me that the thing had merit in the eyes of the public, and so in the latter part of 1918, I think, Mr. Keller called on me in my place and wanted to buy some real windshields, that is, for the back seat. He didn't manufacture anything of that type. And he suggested to me at that time that he would buy the tonneau windshields from me, and that I would buy the front shields from him. That is, I wouldn't make the windshield wings and he wouldn't make the larger windshields for the rear. So we started off on that arrangement. That was in November or [43] December of 1918. We continued that arrangement for several months, but at that time they began to go, that is to say, they were in demand. So, Mr. Keller in his little place, you know, couldn't make them fast enough for me. I could sell them faster than he could make them. So I had a verbal agreement with Keller that would permit me to manufacture such wings as he couldn't supply. And we continued on that basis until April of 1919, and at that time I made an agreement with Mr. Keller to take the exclusive sale of the wings west of the Mississippi River. And that continued

(Testimony of Arthur C. Lillie.)

on until September, and then I manufactured all the wings that I used from September, 1919, on. The demand for this product has been very large. It grew from nothing, just as I have said, Mr. Keller experimenting with it and being laughed at, until it is really one of the best-selling automobile accessories there is on the market today.

The windshield wing heretofore identified and attached to the windshield, marke*t* Exhibit 3, as the product of the plaintiff in this action offered in evidence.

Mr. HARRIS.—We object to the offer of this windshield in evidence. This is not in accord at all with the Patent. The only point of resemblance it has with the patent is that it grips the glass here. I don't think that shows the court anything. We object to it as incompetent, irrelevant and immaterial.

Mr. KELBY.—This is offered as the commercial product of the plaintiff.

Mr. HARRIS.—The fact that the plaintiff is making something, has no relevancy in this suit, that I can see.

THE COURT.—I will overrule the objection. Proceed. [44]

Counsel for defense admits that written notice was served on defendants stating the issuance of this patent and charging infringement by defendants.

Mr. HARRIS.—We received notice prior to the bringing of this suit and after the re-issue of the patent. I would, however, like to have the date of that notice,

(Testimony of Arthur C. Lillie.)

since our liability for infringement may arise from that date, and it may make considerable difference; damages may be assessed against my client.

Mr. TOWNSEND.—As long as they admit notice before the suit, your Honor, it is sufficient for the prima facie case.

THE COURT.—Yes; that is sufficient.

Witness says that shortly prior to this action he had a conversation with defendant, Harry W. Hahn, at his place of business, at which Mr. Barkelew, a patent attorney, was present. Witness started out to find out where these windshields were being made, and he began at the source of the thing, and from the foundry he found that they were delivering the castings from the [45] foundry to this man Hahn, who has a machine shop, and so witness went to Mr. Hahn. This Mr. Hahn is Harry W. Hahn, defendant in this case. Mr. Hahn said, yes, he was doing the machine work on these castings for Kipper, and that the Adams-Campbell Company paid him for the work. And the foundry man told witness the same thing—Mr. Ruegg, of the National Brass Works. And he said that a good many times Mr. Hahn did the shipping himself. He carried a stock of this merchandise on hand, evidently four or five hundred pairs, and when the Adams-Campbell Company or Mr. Kipper, or whoever the man ordering the stuff was, wanted some, why, we delivered him so many. Witness purchased from defendant, Augustine S. Lockwood, individually, the windshield wing comprising Exhibit 2 in this case. (Tr. pp. 16-20.)

(Testimony of Arthur C. Lillie.)

Mr. HARRIS.—We have admitted that that is the device (referring to Exhibit 2) made by our clients. It is unnecessary to prove that.

Mr. KELBY.—Do you admit, Mr. Harris, that Mr. Lockwood, the defendant in this case, is doing business as the Kozy Wing Auto Supply Company?

Mr. HARRIS.—Yes; I think we will admit that.

Cross-Examination by Mr. HARRIS.

Witness explains that a tonneau windshield is a windshield that is intended for the tonneau—the rear seats—for the protection of the rear seats of an automobile; it is screwed to the rear of the front seat to protect the occupants of the rear seat.

Witness does not remember when he first started to manufacture such tonneau windshields. In 1911 he says we were making windshields—front windshields. Automobiles had no windshields on them in those days. [46]

Q. Well, you testified that in 1917, when this wing windshield was first brought to your attention, that you were making and selling tonneau windshields. Approximately how long had you been selling them at that time? Several years or several months?

A. Well, they were in the same condition that Mr. Keller's wing was in then. You nearly had to force it on a man to make him buy one. Every one was different. I imagine we had been making them for some time, two or three months.

Q. Not longer than two or three months? The

(Testimony of Arthur C. Lillie.)

point I am trying to get you to answer is when did you first start manufacturing and when did you first start selling these tonneau windshields that you are talking about?

Mr. KELBY.—We object to it as "windshields". Tonneau windshields are not in issue in this case.

THE COURT.—Yes, tonneau windshields are not in issue in this case, but it serves to fix the date that this witness testifies about in this matter, I think.

A. Well, I know that I had made tonneau windshields at that time.

Q. (By Mr. HARRIS). For a long time previous? A. No, not for a long time.

Q. Well, for at least a year previous to that time?

A. No, I don't think so.

Q. You are very positive as to this date in 1917 when you talked to Mr. Keller? A. I certainly am.

Q. You are not equally positive in regard to the time that you first started making this tonneau windshield which you have? [47] A. No.

Q. You have no remembrance of that date at all?

A. No, I don't remember the exact date.

Q. Isn't it a fact that those tonneau windshields consist essentially of members equivalent to the ordinary windshield in this model that I show you, which have wings on the side which fold in from the side to protect the side of the car?

Mr. KELBY.—I object to that as immaterial, not in issue in this case.

(Testimony of Arthur C. Lillie.)

THE COURT.—I don't understand the question, Mr. Harris.

Mr. HARRIS.—Well, what we are trying to show —we won't attempt to try to hide it at all—this is nothing but a tonneau windshield put on the front of the car.

"In other words, they had long previous to the time that they are testifying about, tonneau windshields which were placed on the back of the front seat, and which had wings exactly like these, that swung in from the side; and we desired information from Mr. Lillie here that he manufactured and sold those things himself, and he has testified that he did manufacture and sell those things. Now, I am trying to get him to admit that he was making tonneau windshields and selling them at the time that he had this conversation with Mr. Keller, and that is certainly important in this case.

Mr. TOWNSEND.—Your Honor, that would be immaterial on this ground, that this use in July, 1917, is subsequent, to the issue of the patent in suit.

The COURT.—The application for patent here was filed June 14, 1917.

Mr. TOWNSEND.—Yes, your Honor.

The COURT.—Does this stipulation cover these dates that are on these patents?

Mr. HARRIS.—Yes.

Mr. TOWNSEND.—It covers the dates of the issuance of the patent, and covers also the dates of the filing of the application.

(Testimony of Arthur C. Lillie.)

Mr. HARRIS.—We are raising no question as to the fact that Mr. Keller made this application of June 14, 1917, but Mr. Lillie is now testifying that in July, 1917, he was in the business of manufacturing tonneau windshields, and that is a tonneau windshield, simply put on the front of the car."

Mr. TOWNSEND.—Now, your Honor, if he is trying to prove prior public use, he has not pleaded it. He has not set it up in his answer. In the second place, a tonneau windshield with a simple hinged door on the side has got nothing to do with a double-jointed affair of this sort.

The COURT.—We, I don't know; that may be so, but I could not decide that question unless I received the evidence. It does not seem to me that it is proper in cross-examination. I don't know.

Mr. TOWNSEND.—We make that further objection, your Honor, that it is not proper cross-examination.

The COURT.—You may refer back to what he said about his manufacturing tonneau windshields. I will sustain the objection, as not cross-examination. (Tr. pp. 22-28.) [48]

Redirect Examination of Mr. LILLIE.

Witness Lillie identifies plaintiffs' Exhibit 4 as a windshield wing exactly the same as Mr. Keller made.

Mr. HARRIS.—We are very glad to have it in evidence, and we are willing to stipulate that it is made in accordance with the Keller patents.

The CLERK.—Plaintiff's Exhibit 4.

(Testimony of Leonard Ruegg.)

The COURT.—You accept that stipulation, gentlemen?

Mr. KELBY.—Yes, your Honor. (Tr. pp. 28-9.)

Testimony of Leonard Ruegg, for Plaintiffs.

LEONARD RUEGG, called as a witness for plaintiff, testified: That he lived at Inglewood, and is a brass manufacturer under name of National Brass Works, of which he had been Secretary and Treasurer for three years. He appeared as a witness in response to subpoena. Contiuing he says: He is acquainted with the defendants, Adams-Campbell Company, Incorporated, and Harry W. Hahn Manufacturing Company, and knows there is such a concern as Kozy Wing Auto Supply Company, though he has not talked to or had business with them. That he had an official position with the National Brass Works, Incorporated, since June 1, 1918, and was bookkeeper with the Company three years before that. That their records show that they made—manufactured—twenty-five sets of the first wing deflector that Mr. Keller made in December, 1918. They were made for Mr. Keller. He couldn't say positively that they were the first castings that he made because there are so many different things; they just wrote "red brass castings", and didn't give them a name. They made their first [49] Castings for the Adams-Campbell Co., in May, 1919, and he could identify that from the book he brought with him but there may have been some made during the preceding month.

(Testimony of Leonard Ruegg.)

Mr. HARRIS.—Mr. Kelby, this is your witness, and he is testifying that during the month of May, 1919, he made castings like this for our client. Are you willing to stipulate that. You don't need to provide it.

"Q. (By Mr. KELBY). Were those the first that you made, according to your best recollection.

A. According to my best recollection? There may have been some made maybe in the preceding month."

Continuing witness says that he has made castings for Mr. Kipper, or for Kipper and Company, but it was after May, 1919. He also says he delivered castings to Harry W. Hahn Manufacturing Company which he manufactured for Kipper & Co.

Continuing witness says: Anything that was ordered by Adams-Campbell Company was paid by Adams-Campbell Company. When we opened up an account with Kipper & Company all checks bore the name of Kipper & Company to that account. Witness couldn't say if defendant Gable ordered any castings made by witness. Any order that he ver got from Adams-Campbell was a substantial order from them. Anything ordered by Adams-Campbell was delivered to Adams-Campbell's place of business. [50]

Q. Did Mr. Gable ever pay for any castings that you delivered to any of the other defendants?

A. As an officer of Adams-Campbell and on Adams-Campbell Company's check.

Q. What was his position with Adams-Campbell Company?

(Testimony of Leonard Ruegg.)

A. Treasurer, I believe. I couldn't absolutely state that fact, though. (Tr. pp. 31-38.)

Cross-examination by Mr. HARRIS.

Witness is shown a piece of paper dated April 29, 1919, and addressed to "National Brass" and signed "Kipper" and asked if he had ever seen that piece of paper before, says: Yes, sir, I have. About a month ago I was asked by Mr. Kipper to look up the original orders that were given to us from Adams-Campbell Company. I found this piece of paper in our files. Offered in evidence as defendants' Exhibit "A."

Witness is handed five other pieces of paper identified as follows, and found under the same circumstances, marked, respectively, as Exhibits B. to F, inclusive:

A piece of paper dated May 16th, covering same material, and Marked Exhibit "B";

A piece of paper dated May 19th, covering same material, and marked Exhibit "C";

A piece of paper dated May 16th, covering 17—well, castings, and marked Exhibit "D";

A piece of paper dated May 16th, 1919, covering 35 sets brass clamps, and marked Exhibit "E";

A piece of paper dated May 9th, covering same material, and marked Exhibit "F".

WITNESS.—The above material refers to items on the windshield Exhibit 2. Yes, I can identify them on Exhibit 2.

It is stipulated by counsel that Kipper, whose name

is [51] signed to each of these exhibits, is the defendant Kipper in this action. (Tr. pp. 38-40.)

Mr. TOWNSEND.—I will now read the expert affidavit of Mr. James T. Barkelew and then offer Mr. Barkelew for cross-examination.

Mr. HARRIS.—We read that over briefly, and I think that that must be left to his Honor to read in Chambers. I do not care to cross-examine.

The affidavit of Mr. James T. Barkelew is offered in evidence and incorporated in records as Plaintiff's Exhibit 5, and is as follows (Tr. p. 76):

"In the United States District Court in and for the Southern District of California, Southern Division.

IN EQUITY—No. E-86.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation; T. R. GABEL; A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY; HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WIND AUTO SUPPLY COMPANY,

Defendants.

AFFIDAVIT OF JAMES T. BARKELEW.
Under Equity Rule 48.

State of California,
County of Los Angeles,—ss.

James T. Barkelew, being duly sworn, doth depose and say that he is a citizen of Los Angeles, State of California, by profession a solicitor of patents and has had professional experience extending over fourteen years. In the soliciting [52] of patents he has become familiar with the preparation of patent specifications and claims, their construction and meaning, having prepared and prosecuted several thousand applications bearing on various subjects of inventions; that affiant's collegiate training was at Stanford University where he took courses in mechanical engineering. Affiant has read and understands the Keller Re-Issue patent here in suit. Furthermore, affiant is particularly familiar with this Re-issue patent in suit, since said re-issue was taken and prosecuted directly by your affiant as attorney for the patentee. Affiant is also familiar with the construction of such windshelds as are and have been in the past made by plaintiff and such windshields as are manufactured by defendant and complained of in this case as an infringement; such knowledge of the patented windshield being supplemented by actual use and by close study of benefits derived from the use of windshields of this character, and of the so-called art cited by the Patent Office in the prosecution of such application and by the defendants in this case.

As the patentee Keller states, in the specification of the patent in suit, his principal object is "to provide auxiliary transparent shield members which may be secured in an adjustable manner at the opposite sides of the main windshield and more thoroughly prevent the creation of a draft through the vehicle body" (p. 1, lines 18 to 24).

He states that a further object is to so mount these auxiliary shield members in such a manner that they be held in position without obstructing the vision (lines 25 to 30).

A further object is to provide for universality of movement 'throughout a horizontal plane and in relation to the edge of the main shield' (page 1, lines 30-34). [53]

A further object the inventor states is to provide a quick locking means for the pivotal mounting for the purpose of locking it in any desired position (page 1, lines 35 et seq.).

Finally he states that neatness in design, simplicity in construction, and enhancement of the appearance of the vehicle on which the device is mounted are objects (lines 40-44).

The accomplishment of these objects satisfy the requirements of what in practice is shown to be a practical commercial device of recognized utility. This latter statement is the result of a careful study of the so-called art disclosed by the proceedings of the Patent Office in connection with the Keller invention and the art set up by the defendants in their answer.

The patentee, in connection with the description

of his drawings, points out another distinguishing feature of his invention, which he illustrates, particularly in Figures 2, 3 and 4, where he describes the function as well as the construction of the double hinge joint by which the windshield wing is mounted on the side of the main windshield so that the wings may be positioned as in Fig. 2 to co-operate with the main windshield to deflect wind and drafts away from the occupants of the vehicle or, as shown in Fig. 3, for the windshield wing to be put in neutral position to permit the attachment of the usual side curtains; or in the position of Fig. 4, where the shield directs a maximum amount of draft into the car and to the occupants thereof. Thus the position of Fig. 2 for deflecting the air currents away from the interior of the car is the normal position when driving in cold weather or against a strong wind, while the position of Fig. 4 shows the air circulating means by which the comfort of the occupants of the car may be enhanced, or the discomfort of driving relieved in hot weather. Any intermediate [54] position will give varying degrees and direction of draft between the two extremes noted. In addition to that, the double hinged joint and movement of the windshield about its two axes allow the adaptation of the device to a car without interfering with the application of the usual side curtains when it is desired to convert an open car into a temporarily closed car. It is obvious that with the windshield wing in the position of Fig. 2, the ordinary curtain cannot be put up; the wing must be turned outwardly into substantially the posi-

tion of Fig. 3 or Fig. 4 so as to get the wing out of the way for the attachment of the curtains to the main windshield. It is the universal pivoting of the wing that allows all this to be done.

The patentee, after describing the drawings, and referring to the double jointed action of his wings, as just referred to, passes on to a detailed description of the mechanism employed by which his various objects may be accomplished.

First, he refers to the main windshield and its vertical side post 13 upon which the auxiliary windshield which he designates by the character 14 is to be universally mounted. He says the form of the main windshield is immaterial to his invention because his present invention 'relates particularly to auxiliary shield members which are demountable secured to the vertical post of the windshield frame 13' (p. 1. line 82). The auxiliary windshields are described as plate glass portions which carry the numeral 15 in the drawings, and are supported between opposed supporting brackets 17 and 18. These brackets constitute clamp members between which opposed edge surfaces of the otherwise unframed glass shield 15 is held. In connection with this means of holding the glass it is to be observed that these clamp brackets provide properly spaced supports for the [55] glass to support it at spaced or separated points. By this means of spaced and supporting claims which engage the opposite edge surfaces of the glass, the patentee was enabled not only to dispense with a metal frame around the glass but to hold the glass in a safe and

rigid manner so that a device of this character may successfully withstand the serious shocks due to the constant and severe vibrations of rapid travel, particularly over rough roads. The safety factor in an article of this sort is manifestly something that requires especial consideration, since if these devices were flimsily constructed or supported there would be the constant danger to the occupants of the car by breakage and consequent injury to occupants by flying pieces of glass. In connection with these clamp brackets there is employed a hollow rod 22 which extends lengthwise across the glass shield 15 and connects with and spaces apart the clamp brackets 17 and 18, and provides one element of the double hinged joint which is formed in the knuckle joint bracket 23, and which is particularly shown in Fig. 5. This knuckle joint bracket 23 is adapted at one end to embrace the hollow rod or sleeve 22; the other end pivots on a vertical axis 26. The axis or pivot pin 26 in turn is carried by a bracket 29 which clamps to the vertical post 13 of the windshield. As shown in Figs. 2, 3 and 4, this clamp for the vertical windshield post comprises two complementary members 29 and 31, which are drawn together by bolts 30.

The inventor points out on page 2 (line 28 et seq.) that one of the important features of this invention is the fact that the auxiliary shield may be locked in any desired angular relation to the windshield by the manipulation of a single locking member; and then goes on to describe the single locking [56] means, which comprises hand-wheel 21 shown in Fig. 5, oper-

ating on a clamp shaft or bolt 19, which is shown as passing through the hollow tube 22, and in turn acts as a wedge pin 33, which is mounted in the knuckle joint bracket 23 in such position that when the hand-wheel 21 is screwed up on the rod 19 and the rod pulled down, the member 33 in turn is projected outwardly to grip the pivot pin 26 frictionally; or, conversely, by loosening the nut 21, the clamp shaft or bolt 19 is loosened and the grip on the pivot pin 26 is loosened so that the double joint is free to turn on the two spaced axes and produce the desired universality of swinging movement. In other words, the clamp wheel 21 is the single adjusting means for locking all joints in connection with the knuckle joint bracket 23, and it is this so-called knuckle joint bracket 23, with its pivots 26 and 19 in conjunction with the clamp wheel 21 which embodies a double hinge joint and clamping means, and which clamping means are adjustable at a single point to hold both of said joints against movement.

The patentee calls attention at the end of the specification and just preceding the claims, that he has merely described one form of construction then known to him, but it is understood that various changes in the construction, combination and arrangement of parts may be made by those skilled in the art without departing from the spirit of his invention.

In the practical embodiment of this invention we readily see a reason for the double hinge joint as well as for the wide range of circumferential movement or rotating movement of the shield 15 around the ver-

tical end post 13 of the regular windshield. The double hinge joint not only allows of general universality of movement allowing the shield to be put in a great variety of positions, but it also provides that the shield [57] can be swung outwardly far enough away from the windshield post to clear the usual windshield adjusting screws that are mounted on the outside of the post; and at the same time provides that the shield can be thrown inwardly to such a position as shown in Fig. 2 with its edge close to and behind the main windshield.

It would seem apparent that a successful commercial windshield wing must possess the following characteristics:

1. Artistic and harmonious appearance and design conformable with the correct appearance and design of the automobile to which it is to be applied having regard to shape, size and slant of windshield, height of top, etc. (Unframed glass is of course preferable to heavy metal frame which latter would be bulky and unsightly and obstruct the view. Unframed glass with appropriate clamping means allows for glasses of different outline and shape to conform to the lines of the car.

2. Unobstructive to the vision of the driver, This entails the use of a minimum of metal.

3. Adjustability to car whether curtained or open.

4. Adjustability to deflect the wind away from the occupants of the car as in cold windy weather,

or into the car and upon the occupants as in hot weather.

(a. universality of movement.

(b. quickness of adjustment.

5. Durability and safety factor.

6. In employing an unframed glass there must be the provision of an appropriate clamp means between [58] which two opposed surfaces of glass may be embraced, either the glass must be embraced edgewise, or flat surfacewise.

In the commercial development of the Keller patented windshield wing, as the same has come under affiant's notice, there appears to have been slight variations such as usually arise in connection with nearly every invention. That is, in the natural minor changes and refinements that follow in the natural development in the commercial structure of the plaintiff, represented by Plaintiff's Exhibit 3, the plaintiff employs a double hinge joint, with twin spaced vertical pivots, and clamping bolt with a single hand wheel whereby both joints are simultaneously gripped or released to enable the windshield wing to be locked into the various wind deflecting positions,—whether the wind is to be deflected away from the car or in the car. But we note that the clamping bolt 19 of the patent and the hand wheel 21 of the patent are now transferred in practice by the plaintiff directly to the double hinge joint clamp bracket. The action of the two clamping devices is substantially the same, the result is identically the same. It seems that the commercial structure is similar to that of the patent but

presumably carries with it some practical advantages over the specific form shown in the patent.

In the defendant's structure represented in evidence by Plaintiff's Exhibit 2, we find a structure that accomplishes the objects of the plaintiffs in substantially the the same way. The two devices have identically the same principle and mode of operation and of course are for the same purpose. Briefly, the defendants structure comprises: [59]

An auxiliary windshield in which there is an unframed transparent shield member of appropriate outline. This unframed transparent shield is supported by a longitudinally extending rod, which is spaced from the glass, parallel thereto, and extends across the face thereof, and engages and supports the shield at spaced points of the support. Furthermore these spaced supporting means for the glass shield member are carried by the rod and act clamp fashion to engage opposite surfaces of the transparent shield. In the defendant's device these clamps comprise at one side of the shield the rigid disk-extensions on the ends of the rod resting against one surface of the glass shield, and the round disks on the other side of the shield, with the clamp screws which pass through corresponding pairs of said clamp members and through suitably spaced perforations in the glass. It is of course obvious that the specific means employed by the defendant of mounting the rod on the glass is different from the specific means shown by patentee Keller, but they are in their mechanical arrangement and construction and for all practical purposes, the

same in principle. Both clamp opposed surfaces of the glass to support the latter. These clamps are drawn together by screw action. Obviously, if the clamps are moved inwardly from the edges of the glass, the connection must then be through the glass and hence the reason for perforating the glass. Whilst this has a tendency to weaken and does weaken the glass, and thereby render it less efficacious and less safe than by means employed [60] by the patent, nevertheless the differences are merely the differencs incident to the change of location of the clamping means; the supporting points are still spaced. The defendant, like the plaintiff, employs a double-hinged joint, which, in design, is seen to be identical practically with the two-part clamp of plaintiff's commercial structure, Exhibit 3. The clamp bolt and hand-wheel by which the defendant simultaneously grips both its hinges, find their counterpart in the patent in the rod 19, the wedge 33, and the hand-wheel 21. Speaking in terms of mechanism, the means by which the patentee tightens or loosens the grip of his clamp on his two pivots by means of hand-wheel 21 of the patent, *fings* its equivalent in the hand-wheel and clamp bolt and two-part clamp of the defendant. While the form of the means of the defendant is varied from that specifically shown in the patent, exactly the same result is accomplished by substantially the same means. The defendant provides means for attaching his shield or windshield wing to the side frame of the ordinary windshield by means of a clamp and set screws which correspond closely to the

parts 29, 31 and 30, of the patent. In fact, the differences are scarcely perceptible, and are merely colorable.

In the defendant's structure we find present the various attributes which affiant has already pointed out, as embodying the characteristics of a successful commercial windshield wing; there is artistic and harmonious appearance of design, unobstruction of vision, adjustibility to the car, whether curtained or open, adjustability to deflect the wind away from the car or into the car, and the unframed glass with appropriate clamping means, the *the* use of a minimum of metal. The only factor which defendant may be said to have sacrificed, is that of durability [61] and safety by perforating his glass, thereby increasing the tendency to breakage. As already pointed out, this perforating of the glass is simply the result of moving the clamping parts, at the ends of Keller's supporting rod, inwardly and away from the edges of the glass. Whilst this variation of location of the clamping means from that shown in the patent, there has been no variation or change in principal or function—they both provide spaced supports for the glass.

Further deponent sayeth not.

(Signed) JAMES T. BARKELEW.

Subscribed and sworn to before me this 4th day of October, 1921.

[Notarial Seal]

(Signed) VIRGINIA I. BERINGER,

Notary Public in and for the County of Los Angeles, State of California.

File wrapper and contents of the Keller re-issue patent in suit offered and marked Plaintiff's Exhibit 6.

Plaintiff rests. (Tr. pp. 76-89.)

Testimony of Allen F. Kipper, for Defendants.

ALLEN F. KIPPER, called as a witness by defendants, testified that he lives in Glendale and is a defendant in this suit, and manufactures wing windshields similar to the [62] Plaintiff's Exhibit 2. That he first conceived the idea of making such windshields in the winter of 1918. "Well, it was, oh, November or December, some time along there". That he made a model at that time substantially like Exhibit 2 and put it on his machine. "Well, I don't know exactly how long it was on it. It was on there until we commenced to manufacture some in the shop, and then I put on one—that is, on that was finished better. I don't know what became of that model.

Continuing Witness states: "We started to make tools in March or April 1919,—tools that were suitable to manufacture this shield in quantity. These two pieces of metal you hand me comprise what we call a forming die for forming the double clamp, and is only one of several that is required. It is the main guide that forms that clamp that clamps the post, and the brackets that clamp on the frame. It forms the steel or presses it into shape to grip these rods. One clamps the bracket on the windshield and one on the rod. This die was made in either March or April, 1919. We made patterns and all the necessary dies for this. This, you understand, is just one die. There

(Testimony of Allen F. Kipper.)

are several blanking dies. A blanking die, a perforating die, a forming die, main stamping dies for all the patterns that are necessary.

This die is offered in evidence as Exhibit "G".

Mr. TOWNSEND.—Objected to as incompetent, irrelevant and immaterial, all subsequent to the admitted discovery of this invention and its application to the patent in suit.

The COURT.—Objection overruled. Your claim is now that there were intervening rights arising between the original patent and the disclosure there, and the reissue patent?

Mr. HARRIS.—Yes, sir. [63]

The COURT.—Well, I don't know what the law is about that. I will take the evidence.

Witness KIPPER.—Mr. Jensen made that die. I saw him make it, and was overseeing the job while he was making it. I am Superintendent for the Adams-Campbell Company and have been for five or six years, and am familiar with the system of accounting used at Adams-Campbell Company. That Mr. Grote also worked on the dies or on the commercial devices sold about the time he was testifying to. The envelope which I am handed, headed "Adams-Campbell Company" marked 252 is a record of the workman's time in the office. The stenographer makes an entry on the back and then makes this envelope, and from the workmen's time ticket their time is entered on this envelope. A charge is put on it, that is, an amount in money. This envelope is given a number

(Testimony of Allen F. Kipper.)

corresponding with our job numbers and the name of what the job is. I am also handed three additional envelopes marked 276, 298, 336, and the same facts apply to these.

Offered in evidence: 252 as Exhibit "H", 276 as Exhibit "I", 298 as Exhibit "J" and 336 as Exhibit "K".

Continuing witness says: "These envelopes have been filed away with our records since they were originally made out.

Q Did you find them in your records?

A. No, I didn't find them; the stenographer found them.

Mr. TOWNSEND.—Do you have the custody of those records, Mr. Kipper? A. No.

Mr. HARRIS.—We have the stenographer to prove it.

Mr. TOWNSEND.—We object to those papers as not sufficiently proven; furthermore, as incompetent, irrelevant and immaterial.

The COURT.—You mean that they are not sufficiently shown that they were properly kept?

Mr. TOWNSEND.—Or that they were true records of the company as well, the witness not competent to prove —— [64]

Mr. HARRIS.—Well, we will ask that they be marked for identification. We have the stenographer here who will identify them.

The COURT.—Let them be marked, and the admission of them will be held in suspension until you make the proper proof.

(Testimony of Allen F. Kipper.)

The CLERK.—Exhibit L for identification.

Witness KIPPER.—This is a piece of paper which I am now handed, headed "Time, Report, Adams-Campbell Company, name William Grote, dated April 26, 1919" is a time ticket made out by the workman. I O. K. all these time tickets and I have O. K.'d this one. To the best of my knowledge and belief that mark was put on there the day following, or the 27th.

These cards were then offered in evidence by counsel for defendant, and offer was objected to by counsel for plaintiffs.

The COURT.—The receipt in evidence will be suspended until proper proof is made.

Similar cards were handed witness Kipper in names of J. H. Jensen, dated April 30, 1919, William Grote, Job 252, dated April 28, 1919, William Grote, Job 252—7 dated April 29th, and William Grote No. 259, dated April 25th, respectively, witness stating that same facts applied to these cards as to the first one introduced. Cards marked Exhibits M, N, O and P, respectively, for identification.

Witness continuing stated that the windshield wings which he sold were mostly delivered to Dick Smith, who was manufacturing nail strippers, and was to sell the wind deflectors.

Witness identified, as bearing his signature, a piece of paper with the name of Dick Smith, 912 Thirty-seventh Place at the top of it, which says: "Your order 1, our order 3, dated May 30, 1919". [65]

(Testimony of Allen F. Kipper.)

He stated Dick Smith was the first man to start to sell this stuff, and "we sold and delivered our wind deflectors to him. Then at any time that I wanted to get some, say to sell to some customer of mine, why, I would tell him to bring me down whatever I wanted, and he would do that, and then I would sign up for it on this book when he brought them down", and that this slip represented such a delivery to him.

Offered in evidence as Defendant's Exhibit "Q".

Mr. TOWNSEND.—Same objection, as not having been properly accounted for.

The COURT.—Objection overruled. He is a party to it, as I understand it.

The witness was handed a bill on the billhead of Alexander T. Bagley & Company, dated April 9, 1919, and identified the handwriting as his own; that he wrote that on there probably some time before the end of April. Referring to this purple ink, "$6.00" when it says "$8.00" witness says he called up Mr. Bagley and said that the charges were too much for it, and then he reduced it to $6.00, and witness put this "$6.00" on and handed it in through the office to pay at $6.00. Says he always O. K.'d the bills before the end of the month. It refers to a lot of Kozy Wing fixtures because "we never made anything that we called, you might say, fixtures, and I know that it was marked for me, and I remember distinctly the transaction".

Offered this bill, which appears bound up with other bills, in evidence, as Exhibit "R".

(Testimony of Allen F. Kipper.)

Mr. TOWNSEND.—Objected to as incompetent, irrelevant and immaterial, and not sufficiently proven nor the paper accounted for, nor the writings upon that paper sufficiently identified to identify the transaction. [66]

The COURT.—Well, I think this witness shows that he knew enough about that to testify. I will overrule the objection.

Witness continuing says: "Dick Smith at the present time is off on a hunting trip, and I don't know just where he is, but I have been trying ever since I got back to town, for the last four weeks, to get hold of him.

The documents testified to and identified here, referring to certain materials are to the best of my knowledge and belief documents and papers referring to this type of windshield, Exhibit 2.

I am superintendent at the Adams-Campbell Company and have knowledge of the system employed in keeping track of materials.

Inside of these envelopes—Exhibits "K", "J", "I" and "H",—are certain papers. For example: In envelope No. 252 there appears certain small slips of paper marked in large letters "material". These papers got into these envelopes when the workman makes that out and it is turned in each night with his time ticket or it is turned in through the stock man and that is turned in with the time ticket, and that is in turn priced by me and turned in to the office for charge; these pieces of paper are turned in as they appear in the office.

(Testimony of Allen F. Kipper.)

The COURT.—As part of the transaction shown in the shop?

The WITNESS.—Yes; and then entered on the back of the envelope there. (Tr. pp. 43-58.)

Cross-examination by Mr. TOWNSEND.

Witness shown invoice of Alec. T. Bagley & Company for plating, Defendant's Exhibit "R", and asked in whose handwriting the item was under the pencil notation "$6.00", which witness said was in his handwriting—this notation in pen and ink, "Chgd windshield [67] bracket April 9, 1919", said:

"Well, I think it is our present stenographer's; I wouldn't say for sure. She has been with us before this transaction."

Q. Do you know when that notation of your stenographer's was made?

It was charged as of this date, at the time that this date was put on here. That is the time that she charges it up on the job, but I don't know when she wrote that item on there. I never saw her write it on.

The business of the Adams-Campbell Company is general machine shop manufacturing of metal specialties. They manufacture lots of things besides windshield wings; they have other lines of products.

The Adams-Campbell Company has been in business as machinists since 1909, and were carrying on a general line of work prior to their undertaking the manufacture of these Kozy Wings.

Q. Now, on these envelopes that you have introduced—and by the way, I will cross-examine this

(Testimony of Allen F. Kipper.)

witness in respect to those envelopes and exhibits without prejudice, and perhaps when I am through we may be able to facilitate their proof. Will you state what the No. 252 means appearing on this envelope, which bears the date April 25, 1919, Defendant's Exhibit "H"?

A. Why, this number here refers to our job number given to it in the shop.

Q. Now what does this first item here mean—"For Windshield Company?"

A. Well, that was the name given to these orders when we started to charging them up to the windshield company.

Q. What windshield company do you refer to?

A. Well, that consisted of—— At that time I had an [68] arrangement with Dick Smith. It consisted of myself and Dick Smith, and that is what we called it in order to have some means of entering it on our books, that is what we called it.

Q. That was a transaction between you and Dick Smith on one hand, and the Adams-Campbell Company on the other?

A. Yes.

Q. What was your position with the Adams-Campbell Company then?

A. Superintendent.

Q. What was the nature of your dealings with Dick Smith that led you to get him to go into the windshield business?

A. Well, Dick Smith came in there on day and

(Testimony of Allen F. Kipper.)

said to me, he says, "I am thinking about making a windshield." And I says, "Oh, are you?" I says, "I am making one." And he says "Well, let's go in partners." He has been one of our customers. I have known him quite a while. So I says, "All right." So we started in on a verbal agreement to make them, and we used my design to make them, as I had already started, and I showed him what we had and what we were doing. And that is the way we go started under that designation.

Q. Now, on this same envelope, Exhibit H, Job 252, under the term "Description" appears the words, in typewriting, "Model Auxiliary Windshield". Why did you give it that designation?

A. Well, our intention in making that was that we usually, before starting this class of work, we usually make up what we call models, some by hand, to see that everything is perfected before making the tools and dies; so we called this order that. I notice that I afterwards put "Tools" or something to that effect, so we would know what it was really for.

Q. So this was initially a model of an auxiliary windshield [69] which you were going to make up for possible future commercial use?

A. No, it wasn't initially a model. The order was entered as an order for models. That is what we were going to call it. In that order that we made we also made tools on that order. We completed our work that we wanted to do, to determine that we were correct, and then we included and went right on and

(Testimony of Allen F. Kipper.)

made tools. The models were hand made, and you don't make tools until you have a model; you wouldn't know what you were going to make unless you had something to make it from.

Q. In other words, your so-called model was in the nature of a pattern from which you were going to make your dies?

A. We would make our dies from our model. We require dies for a clamp that pressed apart, for the washers, that is, the rubberwashers, and we required patterns for all of the castings.

Q. Although this envelope is dated April 25, 1919, Exhibit "H'," you don't want the court to understand that all the items on that and all the papers inside were representative of transactions prior to April 25, 1919, do you?

A. No; they were done in accordance with the dates entered on the envelope.

Q. I note that this envelope bears date under the term of M. Grote, April 25, April 26, 28, 29, 30, down to May 10th. Whatever is in there or whatever is referred to, referred to transactions occurring as late as May 10th?

A. Yes.

Q. In this envelope I see a typewritten memorandum dated June 10, 1919, Windshield Company, Los Angeles, California, 252, for labor and material making tools for oval clamp type windshields, labor and material, $146.56. Does that represent [70] the time that that was delivered to you?

(Testimony of Allen F. Kipper.)

A. No, that represents the time that it was billed to us by the stenographer of the Adams-Campbell Company.

Q. Now, in regard to the envelope dated May 3, 1919, No. 276, Defendant's Exhibit "I," I suppose what you said in regard to the Windshield Company and the manufacture of auxiliary windshields applies to what you have already stated in regard to Exhibit "H"?

A. It applies to that, yes, sir.

Q. And these transactions which seem to extend for practically the entire month of May, and as late as May 29th, would indicate that the items in this envelope were for work or material not completed and delivered or done until the last date that appears on that envelope?

A. Not necessarily, no. There might have been a part of the job completed. Sometimes those jobs run for six months and we continuously make deliveries on them.

Q. In this appears also a typewritten carbon dated June 10th, 1919, No. 276, Windshield Company, Los Angeles, California, for labor and material making tools and experimental work on all other parts up to and including June 9, 1919, $284.39. What does that refer to?

A. That refers to the bill for this labor on this envelope. That little card that you have there. Yes, $284.39. That is the bill for this envelope and this card.

(Testimony of Allen F. Kipper.)

Q. Is that the same transaction that is covered by Exhibit H, Job No. 252?

A. Well, this here is strictly a manufacturing card. This is for producing that article, and that other included tools. [71]

Q. Oh, the first job was for the tools?

A. Yes, That was more tools and models than the first job. This here is evidently all manufacturing.

Q. Your invoice of June 10th says "Experimental work for other parts". There is evidently a period of experimentation with you, is that right?

A. (Examining card.) Well, I couldn't say exactly that. This evidently included all work up to and including that period on this order, 276.

Q. That item doesn't show any particular number or any specific number of windshields made or delivered, does it?

A. No; this doesn't show——

Q. This invoice that I have just referred to, June 10, 1919, covered labor and material for experimental work. Now, in regard to the next exhibit, dated May 16, 1919, No. 298, Defendant's Exhibit "J": It would appear from the contents of this envelope that on June 10, 1919, your windshield company was charged with labor and material for 35 oval brass clamp type Kozy Windshield Wings, $236.90. That statement is correct, is it (showing paper to the witness)? A. Yes.

Q. Also on this envelope—although it bears at the top, dated May 16, 1919, covers transactions running down to May 30——

(Testimony of Allen F. Kipper.)

A. Well, whatever these dates are here. This is May 30, 1919.

Q. And the next envelope, Defendant's Exhibit "K", bearing date of June 5, 1919, No. 336, covers, I presume, transactions subsequent to that date of June 5, 1919, and down as late as August 6th (showing)?

A. Yes. [72]

The COURT.—Well, doesn't the record itself show that, Mr. Townsend?

Mr. TOWNSEND.—Yes; but there are so many little papers. I am just hitting the salient points, your Honor.

Q. Mr. Kipper, do these envelopes or any of them contain any paper illustrating the construction that you say was made, that is referred to there or described in the construction, except by the use of the word that you have used?

Mr. HARRIS.—We object to that question. You have the envelopes and you have the papers in them. Why ask Mr. Kipper what is in the envelopes?

Mr. TOWNSEND.—You admit that?

Mr. HARRIS.—We don't admit anything. Question Mr. Kipper about things that he knows about, but don't ask him about things that are in those envelopes.

Mr. TOWNSEND.—I think counsel could admit that there is not a word of description or construction, nor a drawing nor anything that would give this court the slightest idea of what these structures were that he is talking about, made at that time.

(Testimony of Allen F. Kipper.)

Mr. HARRIS.—Well, the documents speak for themselves. It is unnecessary to ask Mr. Kipper to testify about that.

The COURT.—I will sustain the objection.

Q. (By Mr. TOWNSEND). You stated, Mr. Kipper, that you had done some work with a model in the fall of 1918. Do I understand you rightly?

A. Yes, sir.

Q. What date do you fix for making that model?

A. Well, I fixed it because I had one of these on my car before my boy was born, and he was born in February, 1919. [73]

Q. You had one; what do you mean?

A. I had a set on my machine.

Q. Yes. Who made that set?

A. I made it myself as a sample—a model.

Q. What prompted you to make that set?

A. Well, the idea of going into the business of manufacturing.

Q. Were you familiar with the windshield wings of Mr. Keller or Mr. Lillie—the Hartford Windshield Company was putting out at that time?

A. Why, I was familiar with almost all of the wings that were put out at that time.

Q. Well, were you familiar with the particular windshield wing here in controversy of plaintiff?

A. I believe I was, yes.

Mr. HARRIS.—That question is objected to as indefinite. If you ask him if he is familiar with the particular device, he perhaps can testify.

(Testimony of Allen F. Kipper.)

Mr. TOWNSEND.—He has already answered that he was familiar with it.

Mr. HARRIS.—I move to strike out the answer.

The COURT.—I will overrule the objection and deny the motion.

Q. (By Mr. TOWNSEND). At that time did you have knowledge of the plaintiff's original patent on the windshield wings?

A. Yes; I knew of the patent.

Q. Then if you had these articles as early as you say, November or December, 1918, how was it you waited until the following year, May, June, or July, as the case may be, to begin manufacturing and putting them out? [74]

A. I didn't wait until the following year.

Q. I am only speaking of the record that you have introduced here showing what apparently was done.

A. Well, we started in the shop there, from the records here, we started in March—in February or March with actual work. The work that was done prior to the time that Mr. Dick Smith came into this deal, was charged to Shop Expense, and we had no way of showing that in records, because we can't designate it.

Q. You have no record of any work done in February or March, 1919, on these devices, is that right?

A. No, we have no records prior to these records here, that we can show, because it was charged to shop expense—any record prior to that.

Q. So your testimony relating to anything or trans-

(Testimony of Allen F. Kipper.)

action with regard to this earlier than the date of these records, is from memory? A. From memory.

Q. From memory pure and simple. A. Yes, sir.

Q. How long did you continue that business relationship with Mr. Dick Smith, doing business as the windshield company?

A. Why, some time in August. August 21st, I believe, we terminated his agreement.

Q. And then what did you do?

A. Why, we made an agreement with Dick Smith where we should take over his interest and we would continue the manufacture ourselves, and sale.

Q. You say "we" and "ourselves". Who do you mean?

A. Well, that agreement was made with the Adams-Campbell [75] Company at that time.

Q. What is this organization they mentioned, Kipper & Company?

A. Well, that was myself. I believe that that was after we had bought Mr. Smith out.

Q. (By the COURT). What do you mean by "we"?

A. Well, what I mean is Mr. Gable and myself made that transaction. Mr. Gable is a defendant in this case.

Q. What relation did or does Mr. Gable sustain to Adams-Campbell Company and to Kipper and Company?

A. Why, he has no relation whatever with them.

Q. With what? A. With Kipper & Company.

(Testimony of Allen F. Kipper.)

Q. You are the Kipper & Company, and you are also the Adams-Campbell Company?

A. I am Kipper & Company, and superintendent of Adams-Campbell Company.

Q. Who is Mr. Gable?

A. Mr. Gable is president of the Adams-Campbell Company.

Q. He is practically the managing head and owner— A. Of the Adams-Campbell Company.

Q. Who is Harry W. Hahn, defendant?

A. Why, he at one time manufactured some of these Kozy Wings for me.

Q. Wasn't he also an employe of the Adams-Campbell Company at one time?

A. He was at one time, yes.

Q. Now during the time when you first heard of the plaintiff's patent and the time that you formed this Kipper & Company in September, 1919, did you make any investigation of the plain- [76] tiff's patent? A. Did I make any investigation?

Q. Or have any investigation made on your behalf?

A. Between what period was that question?

Q. At any time from the time that you first got the idea of going into the windshield wing business and the time that you formed an organization and interested the Adams-Campbell Company in it?

A. Why, yes; we made an investigation of his patent.

Q. You were thoroughly familiar, then, with the patent from the start?

(Testimony of Allen F. Kipper.)

A. Yes, we were familiar with the patent.

Q. And your investigation, I suppose, was made with the idea that you could find a way to avoid it?

A. No, not necessarily.

Q. Isn't that the long and the short of it?

A. Find a way to avoid his patent?

Q. To avoid the patent or get around it, that you infringed it?

A. No; our idea was we were going in the business of manufacturing wind deflectors, and we didn't want to make a device that would infringe his patent.

Q. That is just what I said. You wanted to see how you could get around it without infringing it. Now, at the time that you started in this business, the Hartford Company had a considerable, growing trade in windshield wings, which you knew?

A. Well, I don't know how much trade they had at the time I started in.

Q. Well, you have found your business one in which your [77] article meets with public demand?

A. Yes, a good, saleable article.

Q. And one that meets the requirements of the trade?

A. It meets the requirements of the trade, yes.

Q. And you found it likewise profitable?

A. Well, I wouldn't say very profitable, no.

Q. You would not continue in it longer if it wasn't a profitable invention, would you?

A. Well, we continue with the hope of making it more profitable.

(Testimony of Allen F. Kipper.)

Continuing witness says that the address of Kipper & Company is 1734 South Los Angeles; the same as the Adams-Campbell Company; that their product is marketed under the title and trade name of "Kozy Wings", and that that is the name of the Lockwood Company—Kozy Wings Auto Supply Company, too, which handles our products. (Tr. pp. 60-72.)

Testimony of Eugenia V. Colby, for Defendants.

EUGENIA V. COLBY, called as a witness by defendants, testified: "That she resided in Los Angeles; that she is secretary and bookkeeper of the Adams-Campbell Company, and has been with that company since November, 1918; that she has charge and custody of the records; that such records as introduced herein by defendants and marked Exhibits "G" to "P", inclusive are in her [78] own handwriting and that they truthfully portray the statements made in them.

Offered in evidence Job Record Book of Adams-Campbell Company as Defendant's Exhibits "S".

Q. (By Mr. HARRIS). We hand you herewith four envelopes. Exhibits "H", "I", "J" and "K", and ask if you recognize those envelopes? A. Yes, sir.

Q. What are those envelopes?

A. They are our job ticket envelopes where we keep our time, labor and material.

Q. When are those envelopes made out?

A. Daily. Well, they are made out at the starting of the job, and then the daily work is kept.

(Testimony of Eugenia V. Colby.)

Q. With relation to the book that is already in evidence, when are they made out—before or afterwards?

A. We first entered in that book and then these envelopes are made out.

Q. Did you make out those particular envelopes?

A. Yes, sir.

Q. Is there anything on either of these envelopes in your handwriting by which you can identify them?

A. These are all in my handwriting, except this, "2 oval clamps".

Q. Were they made on the days on which they appear?

A. Yes, sir; on the day after. I get the card the day after and enter it up.

Q. I will show you herewith certain time reports of workmen, Jensen & Grote. I will ask you if you are familiar with time reports of that kind.

A. Yes, sir.

Q. Is that the form used by you? A. Yes, sir.

Q. And when are those reports made out? [79]

A. These are the cards that are made out daily by the workmen, and then they are posted from there onto the envelopes.

Q. Do you know where those envelopes, "H," "I," "J" and "K," have been since then? A. In our files.

Q. Did you find them in your files? A. Yes, sir.

Q. Do you know where these time reports have been?

A. They have been wrapped up and filed away.

(Testimony of Eugenia V. Colby.)

Q. Did you find them? A. Yes; I got them.

Q. I will hand you herewith a bill from Alexander T. Bagley & Company, which is marked Defendant's Exhibit "R." On that bill appears the words "Charged windshield brackets April 9, 1919". Do you know whose handwriting that is?

A. That is mine.

Q. Did you make that on there th...e day?

A. Yes, sir.

Mr. TOWNSEND.—Leading.

Mr. KELBY.—I object to that as incompetent, irrelevant and immaterial. No proper foundation has been laid for its introduction. It is simply a recital mostly of what has preceded it, and does not purport to be matters of original entry made by the witness at the time of the transaction.

The COURT.—Objection overruled.

Mr. HARRIS.—I will again offer these exhibits in evidence, if there is no objection. (Referring to Exhibits H to P, inclusive, heretofore offered for identification.)

Mr. TOWNSEND.—Why, I told you, Mr. Harris, before, that we would not raise that point, except the objection as to their materiality.

The COURT.—The objection is overruled. (Tr. pp. 92-5.)

Cross-examination of EUGENIA V. COLBY, by Mr. KELBY.

The entries in the book, with especial reference to Job 252, were made on April 25, which fact I know

(Testimony of Eugenia V. Colby.)

because I put the date on there, but the information was given me by members of the company. If Job 252 is shown by this book as begun April 25, 1919, it means the work began at that time, or a day or two later. That is the ordinary and usual way of transacting our business. I can tell when the order was paid from the book. It shows August 21, 1919. With reference to Jobs 276, 298 and 336, entered as of May 3, 1919, May 16, 1919, and June 5, 1919, [80] respectively, they were paid for August 21, 1919.

Q. Are you able now to state why it was that all of these different jobs, some of which commenced in April and others that ended in June, were all settled for on precisely the same date?

A. Because that is when they were all paid; they were all paid the same.

Q. Do you know who paid them?

A. Why, it was in a settlement, you know, when the Adams-Campbell Company finished this up with Mr. Smith, and I think it was at the time of the settlement with Mr. Smith. They made a settlement, and those orders were included in that settlement, the way I remember it.

Q. And Adams-Campbell Company had an agreement or an arrangement with one Dick Smith and Mr. A. F. Kipper, for the sale of windshield wings?

A. No; the Adams-Campbell Company were manufacturing those orders for them.

Witness further testifies that on August 21st the final settlement was between Mr. Kipper, Mr. Smith and

(Testimony of Eugenia V. Colby.)

the Adams-Campbell Company, or Mr. Gable for the Adams-Campbell Company; that they furnished her with a memorandum of the settlement, but that she had no independent recollection of who signed the memorandum, if it was signed, unless she would look it up; that when she says that that was the date of this settlement she only infers that from the fact that she finds an entry to that effect in the book and that is when she knows that the money was paid in, or she wouldn't have put it in. (Tr. pp. 96-100.) [81]

Testimony of John Henry Jensen, for Defendants.

JOHN HENRY JENSEN, called as a witness by defendant, testified: That he resides in Los Angeles and was employed by the Adams-Campbell Company. Upon being handed the time report, Defendant's Exhibit No. "M", on which appears the name of "J. H. Jensen" he states it is in his own handwriting except the "O. K."; that he wrote the day and date on there "Wednesday, April 30, 1919", that he wrote it on that day and also "Job 252 model auxiliary windshield". The same replies apply to slips marked "material" and "Job 252, model auxiliary windshield" and signed "Jensen" which he took from envelope marked "Job 252". Says he wrote this slip; also slips dated May 6th, May 3rd, May 1st, May 7th, and May 8th.

(By agreement of Counsel it will appear that these slips which are enclosed in the envelopes are a part of the exhibit.)

(Testimony of John Henry Jensen.)

That the die handed him, Defendant's Exhibit "G", was all made by himself; that he connected this die with material slip dated May 7, 1919 by the material which is on the slip; that he made the slip out on that date so far as he knew. (Tr. pp. 102-5.)

Cross-Examination of J. H. JENSEN
by Mr. KELBY.

Upon cross-examination witness states that he was employed by Adams-Campbell Company about two years; left them in January, 1920; that the card exhibits which are handed him signed "Grote" was not made out by him; that his testimony in chief in this respect was in error. He stated further that the material [82] called for by the Defendant's Exhibit "G" goes into the die. If the material slip called for one and one-eighth pounds of steel, one pound only may have gone into the die and the one-eighth may have gone into machining; that he probably could not say independently to a certainty that the material listed all went into the die and that he was depending on what he found listed on the paper.

Continuing witness testified: No, I have not talked to either of the parties defendant in this suit about what I would testify to here, nor to Mr. Harris, nor his partner, Mr. Graham, nor to Mr. Kipper.

Q. How came you to be here today?

A. He come and asked me if I remembered working on these dies.

Q. Who? A. Mr. Kipper.

(Testimony of John Henry Jensen.)

Q. Then you have had conversation with Mr. Kipper? A. Oh, yes. Well, I talked with him.

Q. Did he show you these exhibits?

A. Not these dies—not these forming dies, no. He didn't show me these forming dies at the time I spoke to him.

Q. Did he later——

A. No; well, only this morning, I brought them up here in a paper.

Q. Did he attempt to connect the forming dies with the exhibits which you have just identified as being in your handwriting? A. No, sir.

Q. You didn't discuss that matter, did you?

A. No, sir.

Q. You hadn't seen these papers since the time they were made?

A. Oh, yes. Yes; I have seen the papers. That is, this morning I was asked if those time cards and these material slips were mine—were in my handwriting—if I had made them.

Q. Now, passing on from that, Mr. Jensen, have you now [83] any distinct, definite recollection as to the date when these forming dies were completed?

A. No, sir.

Q. Did you complete them?

A. I completed them; yes, sir.

Q. And you don't remember the day?

A. No, sir.

Q. Now, I wish you would examine Exhibit G again and tell the court how you know that was the

(Testimony of John Henry Jensen.)

particular die that you were concerned with.

A. I couldn't tell the court or anybody that this is the particular die. There may be another one made exactly like the one I made. I have no marks on here——

Q. There are no marks on that, are there, by means of which you are able to identify it?

A. No marks, no; I made no mark on it.

Q. That is also true of the counterpart of the same exhibit, is it? A. Absolutely. (Tr. pp. 105-111.)

JOHN H. JENSEN, recalled by defendant.

Redirect Examination by Mr. HARRIS.

Q. Mr. Jensen, I would like to have you examine this exhibit here which is marked Pliantiff's Exhibit No. 2. Come here and examine it.

Mr. KELBY.—We object to this as improper redirect examination.

The COURT.—The objection is overruled.

(Witness examines exhibit.)

Q. (By Mr. HARRIS). You have testified that you made dies and tools, and that you made a die, as I understand it, equivalent to this, if not this die. Were those dies and tools, in your opinion, suited to make that particular clamp? [84]

Mr. KELBY.—Objected to as calling for a conclusion of this witness, no proper foundation laid, and leading.

The COURT.—I overrule the objection.

A. They are.

Continuing witness stated that previous to this morn-

(Testimony of John Henry Jensen.)

ing in court he hadn't seen the material slips since he put them in the box at the Adams-Campbell Company; that he did not believe that counsel for defendant ever showed them to him before; that he was not asked what he would testify to when defendant's counsel called on him at the laboratory three months previously. (Tr. pp. 111-114.)

Recross-Examination by Mr. KELBY.

Witness testified that Defendant's Counsel brought a Kozy Wing up to the laboratory, or fixtures without the glass, and asked him if he remembered working on them, and he told him, yes; and "he just said that he might require me to leave my work for a time and come down here; that there would be a trial about it"; that he, witness, might have asked him what was the matter, but that is about all. There was nothing said about what he should say or anything of the kind.

Q. Did you tell him that you made the dies?

A. I told him that I made the dies for those clamps, these two little pieces here (pointing to the connection between the glass and the windshield of Exhibit 2).

Q. (By Mr. KELBY). The formation of die by which to manufacture the clamp that you have pointed out was the subject of a discussion between you and Mr. Harris when Mr. Harris called at the laboratory, was it?

A. Well, I don't know as we talked about my forming die [85] at all; we simply spoke about the clamps.

(Testimony of John Henry Jensen.)

Q. He brought the hardware along with him, did he? A. Yes, sir.

Q. And you examined it very critically together?

A. Yes, sir.

Q. And you discussed its structural formation?

A. Oh, no, I just spoke about it casually.

Continuing witness testified that: When he made that die he didn't have Plaintiff's Exhibit 3 in front of him, and didn't remember of ever seeing anything of the kind, but made the device from Mr. Kipper's suggestion. That, of course, there must have been some sketches to give him an idea of what to make but he don't remember positively, but there must have been some little hand sketches.

Q. Now, do you recall whether you worked from a sketch or from a patent or from a mere description —oral description—furnished you by Mr. Kipper?

A. I either worked from a sketch or from a description.

A. Well, there are so many jobs, your Honor, that I couldn't very well——

The COURT.—Well, nobody is blaming you for it, but we want to know what your memory is.

Q. (By the COURT). You don't know which?

A. I couldn't tell which, at the present time.

Witness examines clamp of Plaintiff's Exhibit 3 and hand wheel of Exhibit 2. [86]

Mr. KELBY.—Q. Are you able to tell the court now that there is any difference between the two members in their operation?

(Testimony of John Henry Jensen.)

A. I am able to tell it; yes, sir.

Q. Well, is there any difference?

A. Not in the method.

Witness further testifies: That he is able to account for the striking similarity between these two structures, and that is just the natural way that anybody would do it. That he never made any clamping device for a Kozy Wing of any kind, or any fixture just like that before; that he had not before making this clamping device seen and examined nor heard of the clamping device which was used by the plaintiff Keller, and did not know that the Hartford Windshield Company was manufacturing that device, and that he was sure that he didn't work from the pattern of the Hartford Windshield Company or Keller. He did not have one of these clamping devices before him when he made this die.

Q. Then is the similarity between these two devices that you examined one of pure accident?

A. It is just the way a mechanic would make it.

Q. That is your answer, is it?

A. Yes, sir. (Tr. pp. 114-120.)

Redirect Examination by Mr. HARRIS.

Witness testified that he was not at the present time employed by the Adams-Campbell Company but by Rothacker-Allen [87] Laboratory and was not personally interested in the outcome of this suit.

Testimony of William G. Grote, for Defendants.

WILLIAM G. GROTE, called as a witness by defendant, testified:

I reside at Glendale, employed by Realart Pictures Corporation, have no personal interest in the outcome of this suit. I recognize as my own the handwriting on the four time reports, Defendant's Exhibits Nos. P and L. To the best of my knowledge and belief they were made out on the date shown on them; that was our usual method. I can identify Exhibit No. 2 as similar or equivalent to the model auxiliary windshield I made at that time. The three slips of paper handed me, two dated April 28, 1919, and one dated April 29, 1919, and entitled "Windshield" and "Auxiliary Windshield" on which the name "Grote" appears at the bottom, are in my handwriting. I wrote them on the date shown thereon; that was in accordance with the usual practice of the Adams-Campbell Company.

The dies which you hand me, Defendant's Exhibit G, I have previously seen at the Adams-Campbell Company; they were used for forming clamping plates for clamping the Kozy Wing plates to the windshield, as shown in Exhibit No. 2.

Mr. Jensen made those dies; I was sort of shop foreman in charge of shop when Mr. Kipper was out, and I saw Mr. Jensen make those dies, but I cannot tell approximately from my independent recollection when Mr. Jensen made those dies. (Tr. pp. 120-2.)

(Testimony of William G. Grote.)

Cross-Examination of WILLIAM G. GROTE, by Mr. KELBY.

Q. Mr. Grote, did you have some doubt when you examined [88] the windshield lying on the Clerk's desk, as to whether that was a windshield manufactured by Adams-Campbell or by somebody else?

A. Yes, sir, I had some doubt (Referring to Plaintiff's Exhibit No. 4). That is the reason that I spent several seconds in examining it.

Q. And although Mr. Jensen, whom you say made the dies, is unable to identify them, you, who did not make them, are able to identify them; is that true?

A. Yes, sir.

Continuing the witness states: There are no marks on them that enables me to identify them but I absolutely remember him doing it. I last saw the dies before today in operation, probably in the summer of 1919, or more than two years ago and I haven't seen them since. There was nothing on the body of these dies in the summer of 1919 that enabled me to identify them but I remember them making windshields at that time. I used to set them up in the press myself. Adams-Campbell Company in the summer of 1919 had other dies than these. They had the blanking and the perforating die for making windshield wings and had all the necessary tools for making that windshield wing that is on the right-hand side (Plaintiff's Exhibit 2). They never at any time during the term of my employment, that I can remember, made any other die similar to the one I have identified. It

(Testimony of William G. Grote.)

was never duplicated. This is the development of the primitive one we made at first. That is the reason I looked at the windshield first, because we made a cruder one very early in February or March; not experimental dies but experimental wings without dies. I did not make any experimental dies for this clamping device, and do not know of any one else in the employ of Adams-Campbell Company who did make one for Adams- [89] Campbell Company prior to this die nor since that time, but I left in October or November, 1919, so I don't know what happened.

Q. You have identified certain of these slips as having been made by you, recognized your own handwriting, and that they were made on the dates that they purport to bear. What makes you think now that those were the dates?

A. Well, because I wrote them there,—it was customary in the shop at the time that I was employed there to make out a time card and material slip, if any was used, every day; and the day that I made that, that material was used on that day for that purpose.

Q. And the reason that you now state that these slips were made on the particular dates that they bear, is because it was customary to make slips of that kind in respect to transactions on the same day?

A. Yes, sir. (Tr. pp. 123-127.)

Testimony of A. Herman Venske, for Defendants.

A. HERMAN VENSKE, called as a witness for defendants, testified:

I reside at Glendale. I am not a party to or personally interested in this suit. I recognize the windshield which you hand me. I took it from my car this morning. I have used it on my cars since some time in February, 1919. I don't recollect the exact date when I got that, but I do remember that I had them on on the 22d day of February, 1919, because I made a trip to Perris and Riverside that day. I had them some little time before that. I obtained that windshield from Mr. Allen F. Kipper, a party to this suit, some time before February 22, 1919. [90]

Offered windshield in evidence as Defendant's Exhibit T.

The COURT.—Well, let it be marked in evidence.

Mr. TOWNSEND.—Objected to as incompetent, irrelevant and immaterial, because it shows it was made subsequent to the invention of the patent in suit, and it is only pertinent to show possible infringement.

The COURT.—Objection overruled. (Tr. pp. 128-9.)

Cross-Examination by Mr. KELBY.

Witness states that he has lived in Glendale six years last July. On February 22, 1919, he was about seven miles west of Perris, looking over a piece of land; that he remembered the date simply because it was Washington's Birthday in the year 1919, but did not

(Testimony of A. Herman Venske.)

keep a diary. He did not buy the wings on that day; bought them some time before that but doesn't recollect the date but had them on that automobile trip. Also that "I have known Mr. Kipper three or four years; knew him before I bought this windshield. They cost fifteen or twenty dollars. Kipper was at my house after the holidays and told me he was manufacturing them and I asked him to make me a pair. That was a few days before the 22d of February. [91]

I have not talked with Mr. Kipper lately until this morning; did not talk with him about what I would testify to nor have any conversation at all about this lawsuit. He called me over the phone and told my daughter.

Q. And the fact is, Mr. Venske, that you haven't talked with Mr. Kipper about what you would testify in this case at all; is that correct?

A. Not as to testifying, no, I have not.

Q. How did you come to bring your windshield here? A. Well, he asked me to bring it.

Q. He asked you to bring it?

A. No, he asked my daughter to bring the windshield along. Before I bought my set of windshields, I had seen them on Mr. Kipper's car, about the same time I bought mine. I do not recollect seeing a windshield of this kind before, but I had seen other kinds on cars on the street but paid no attention to them. The kind I bought were the same as Mr. Kipper had on his car at that time; he said he was making and

(Testimony of A. Herman Venske.)

selling them; I had to wait a week or ten days for delivery; I put them on my car myself.

Q. Have you talked with Mr. Harris, the attorney for the defendants in this case, about your testimony?

A. No, I have not.

Q. (By the COURT). Have you talked with him about the facts of the case—the facts concerning this windshield? A. No.

Q. (By Mr. KELBY). Did you talk with anyone this morning, either before or after you entered the court room, about what you would testify to? [92]

A. No, I haven't. (Tr. pp. 130-137.)

Redirect Examination by Mr. HARRIS.

Q. Mr. Venske, now you say that you haven't talked to anybody about what you would testify to. Didn't you talk to me about the case in my office this morning; didn't we discuss briefly what you knew about the case?

A. No; I told you I didn't know anything about the case. I told you the time I bought the windshield and that it was on my car.

Recross-examination by Mr. KELBY.

Q. You did have a conversation with Mr. Harris this morning? A. Not regarding the case.

Q. That is your version of it, is it?

A. Regarding the windshield.

Q. Yes. Don't you know that the thing involved in this lawsuit is a windshield?

A. Well, I didn't know whether it was a windshield

(Testimony of A. Herman Venske.)

or what—or part of it, or what it was, as far as that.

Q. Anyway, it was about a windshield that you talked with Mr. Harris this morning about at his office?

A. Yes; he asked me if I had a windshield, yes.

Q. Was Mr. Kipper there this morning?

A. Yes, sir.

Q. Did you talk with him?

A. No, I don't think I did; I don't remember.

Q. Did he call your attention to the fact that you bought this in February of 1919? A. No, sir.

Q. Didn't help you remember anything at all, did he? [93] A. No, sir.

Q. Well, do you now remember, Mr. Venske, exactly what Mr. Kipper said to you this morning.

A. No; I don't know that Mr. Kipper said anything to me this morning, because I had no time; I was only in there a minute or so.

Q. Well, did Mr. Kipper say anything to you this morning?

A. He said "Good morning." I know that.

Q. Is that all he said?

A. I don't recollect him saying anything——

Q. And yet you don't recollect what happened within the last two hours, and you do recollect what happened over three years ago, or over two years ago?

A. Yes, I do remember that particular date.

Witness proceeds:

"I don't remember whether I paid for the windshield by money or check, nor whether I took a receipt.

(Testimony of A. Herman Venske.)

I guess I had a bank account at that time. I sometimes pay by check, but not small items."

Q. (By Mr. KELBY). Do you always carry fifteen or twenty dollars in your pocket?

A. Sometimes I do and sometimes I don't.

At that time I banked with the First National, Glendale. I have not inspected my bank account to see whether I paid by check or not. I generally burn up receipts and bank checks at the end of a year to prevent accumulation. I keep the check stubs about two years. Well, I do not remember as to the payment of this wing at all at the time it was delivered to me; I suppose I did, but do not remember payment [94] for it; I do not think Mr. Kipper would charge it to me, nor give it to me. If he didn't give them to me, I must have paid for them; I do not remember whether I paid cash or check; I don't remember the payment. (Tr. pp. 137-147.)

Testimony of Allen F. Kipper, for Defendants (Recalled).

Testimony of ALLEN F. KIPPER is as follows:

I have heard Mr. Venske just testify relative to defendants' Exhibit T—windshield; it is my own manufacture; I recall selling it to him sometime in January or February, 1919; because it was one of the first ones that I sold. Mr. Venske paid me by check, a long time after I delivered them. The exhibit you hand me, Defendants' Exhibit T—windshield, is the same as Exhibit 2, except the Exhibit 2 is made of brass

(Testimony of Allen F. Kipper.)

instead of steel. We changed from steel to brass about a year ago to prevent rusting. (Tr. p. 147.)

Recross-Examination ALLEN F. KIPPER
by Mr. TOWNSEND.

Q. This two-part clamp, Exhibit "T", is made by the same clamp that Exhibit 2 is made of?

A. Well, I don't know. I could tell if I had the clamp to fit it. I think this was made with a temporary die. If you will look at it you will notice that the curvature here is a little different from that other one.

Q. You have detached the two-part clamp from Exhibit T, and you hold the die which has been previously testified to, and which is in evidence as Defendant's Exhibit "G", and you find that two part clamp of Exhibit "T" to be made by this same [95] die.

A. Wait until I see the other business, and I can tell you. No, the other part of the die. (Makes examination of dies.) No; that was never made in this die.

Q. Well, what is the reason of your answer?

A. The reason for my answer, you can take a dime and see it. Look here; I will show you; you see, this is the part that forms it (indicating); and the only way possible that could be made in that die is that that die was set way up in the press and hardly hitting. You will notice that it doesn't anywhere near conform to the center part, that is, this part which is to form the center part. And also that in here (indicating). You

(Testimony of Allen F. Kipper.)

see, you can look through that hole and see it is within an eighth of an inch from the bottom here.

Q. The fact that this clamp of Exhibit "T" is rusted—— A. That has got nothing to do with it.

Q. Whilst the die is a perfect, smooth finish, has that got something to do with it?

A. No. You would have to do some rusting to rust off an eighth of an inch. These were evidently made in one of our hand dies, or something, on the first ones that we made. There is about an eighth of an inch from there down (indicating).

Q. Will you detach the *claimp* of Exhibit 2 now and let us see how they fit in comparison.

(Witness detaches clamp.)

Mr. HARRIS.—We object to this comparison—well, I don't know either. I don't know whether Mr. Kipper made this one or not.

The WITNESS.—Yes, I made this one, I think. Apparently I did. This, however, is a steel clamp, and this was bought quite a while ago. Here is one that was made in that die (indicating). This is one of our old ones. You see, that fits in there. You see, that fits. Put it on top of here. You see, it fits all around.

Q. (By Mr. TOWNSEND). As a matter of fact, in compressing a [96] steel plate of this sort, or metal plate, the closeness of fit does not always result from the stamping action, does it? A. Yes, it does.

Q. Isn't the thing which you want to do, to give it the shape?

(Testimony of Allen F. Kipper.)

A. Well, no. In making a die, of course, in some materials, there is a slight spring—there always is, but they take the shape which will be a very good bit on the die. They spring back a little. Now, take on a job of this kind, well, it isn't very loose, but it is a little bit. Now, you can slide that over here, but you can't hardly get your knife under the corners there. In pressing this down, there is a certain amount of spring. You are pulling that metal across the corner there, and there is a certain amount of spring, and you can pull this back a little bit, and this may have been squeezed a little bit.

Q. (By Mr. KELBY.) As I understand you, Mr. Kipper, you spent part of the months of April, May and June in making a die and forming a die?

A. No; making lots of dies and tools.

Q. I mean, for the fabrication of this windshield?

A. Yes; that is what I mean. For making all the tools and dies necessary for it.

Q. And you began to make those late some time in April, is that not so?

A. No; we began before that; we had no record of our time because it was charged to the shop until Mr. Smith came into the deal.

A. Yes. As I said before, we had no record of our time, because it was charged to the shop until Mr. Smith came into the deal. We charged it to shop expense. Like in a custom shop, there is a certain amount of lost time in between jobs, and there may

(Testimony of Allen F. Kipper.)

be a job that isn't ready for a man, and we will say, "Well, go on this job and work on it until I get something ready for you," and we charge that to shop expense. We have lots of jobs of that kind coming in."

Q. Now, you first started out by making some sort of model, and from that model you made these forming dies?

A. Yes; we made a model in the first place, that is, I made that myself—I don't know as it is from that model exactly that we made these forming dies, but it was from the more refined stuff that we made. We would change little refinements on it. If we thought that certain parts were weak we would make it a little stronger—something like that.

Q. In other words, you were simply carrying on this work experimentally during April, May and June. [97]

A. No, that was never made in this die; it doesn't anywhere conform to the center part.

Q. Will you detach the clamp of Exhibit 2 now and let us see how they fit in comparison.

A. You see, it fits all around, and in compressing a steel plate of this sort the closeness of fit results from the stamping action.

Q. (By Mr. KELBY.) As I understand you, Mr. Kipper, you spent part of the months of April, May and June in making a die and forming a die?

A. No; making lots of dies and tools.

Q. I mean, for the fabrication of this windshield?

(Testimony of Allen F. Kipper.)

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Q. In other words, you were simply carrying on this work experimentally during April, May and June? [98]

A. No; that was when we decided what we were going to make, and had made arrangements to go ahead and manufacture, and we have not changed our product since that time.

Q. Now, in January and February you made a few of these windshields by hand. How many did you make? A. I couldn't say how many we made.

Q. Did you make them for Adams-Campbell Company?

A. They were made, you might say, for myself. The

(Testimony of Allen F. Kipper.)

labor was charged to expense, to the Adams-Campbell Company.

Q. If any of those were sold, to whom were the payments for them made?

A. Why, I received the money for those first pairs.

Q. The expense of making them was charged to Adams-Campbell but the price, when paid in, came to you?

A. For those first few pairs it did. I mean those that were made previous to the time that was put on a regular charge on our books.

Q. And during that time you were experimenting at the expense of the Adams-Campbell Company, were you? A. I was, yes.

Q. Yes; and putting the proceeds in your own pocket? A. Putting it in my own pocket?

Q. Yes.

A. Those that were sold came to me. The Adams-Campbell Company had knowledge of it.

Q. You were superintendent for Adams-Campbell Company at that time? A. I was.

Q. Who were the officers of Adams-Campbell Company?

A. Mr. Gable and Mr. Jones; they were all the stockholders [99] and all the officers also.

Q. They were the board of directors and officers and stockholders of Adams-Campbell Company?

A. Yes, sir.

Q. And as officers and stockholders they permitted

(Testimony of Allen F. Kipper.)

you to carry on these experiments at their cost for your profit? A. They did.

Q. And did you keep any record of the amount of material that you consumed in manufacturing these devices in the month of January?

A. No. As I say, that was expense, and we have no way of separating it from our other expense, like upkeep of machinery.

Q. Did you keep the time of your employes in January? A. Yes, sir.

Q. Did you keep a record of the materials consumed daily in a given job? A. Yes.

Q. But you didn't keep any record of the time or the materials devoted to the fabrication of this, did you?

A. Why, yes, there was a record, but we don't know now what it was for. We have no way of telling, only that it was charged to shop expense. The same as we would repair a machine tool, it would be charged to shop expense.

Q. Now if you didn't keep a record of material and labor for those early months, did you keep a record of the moneys that you collected from the sale of these devices?

A. No; I didn't. When I collected the money I spent it or used it upon something.

Q. Do you now recall how many you actually formed in January?

A. No, I really haven't the—well, anywhere near an idea how many we made in that month.

(Testimony of Allen F. Kipper.)

Q. Did Mr. Hahn collaborate with you in the making of [100] these in January?

A. No, not at that time. I don't believe he was in our employ until later than that.

Q. Do you know how many you made in February?

A. No. The only time I know positively how many we made or sold is after we entered up these job records that have been introduced in evidence. That was the first time we attempted to keep any record of what we had made or of what they cost.

Q. Yes. And all that you had made prior to the time of the keeping of the records was a desultory few?

A. Well, it wasn't very many, no.

Q. No, just a few, possibly to the extent of a dozen all told; is that right?

A. Well, I don't know about a dozen. I should think, though, that we had made over—I don't believe that we made over fifty anyway, before that time.

Q. (By the COURT). Before what time?

A. Before we entered these records on the books.

Q. Well, when did those records commence?

A. In March and April, 1919.

Q. (By Mr. KELBY). Well, now, of fifty that you made, assuming that to correctly represent the full number, you sold one pair to the previous witness, and you applied a pair to your own car. Now, can you tell us the name of a single individual to whom you sold another pair in the months of January or February or March or April, 1919?

(Testimony of Allen F. Kipper.)

A. Yes; I know of several pair that I can recall. I sold one pair to Burt Stanfield, in Whittier, and one pair to my brother-in-law. That is E. M. Stanfield. And I sold one pair to a fellow in La Habra. Now, I can't recall his name; but he was at that time renting a house from me. I can't recall what his name is right at present. [101]

Q. All right. That is three. How many more?

A. And there was one of our customers, I believe. Ratliff, I think, got one of the first pairs. They were given to him, though. He was one of our customers in the shop, and we gave him a pair. And Dick Smith had one of the first pairs, too. Well, this Ratliff was the manager of the Aluminum Honeycomb Company, and we were doing his work. That is how we happened to give him a pair.

Q. Yes. Well, who else?

A. Well, Mr. Venske. You have got that. I sold some there in Glendale. I can't think who they were right now.

Q. (By the COURT). You say now, as I understand it, that you had no books of these sales at all?

A. Not previous to this time. I have since orders——

Q. I know, but the three months that he is asking you about.

A. No, I had no record at all of that stuff; that was only a few pair, and the work was done, you might say, on expense, and we really hadn't got started. I hadn't made any arrangements with Adams-Camp-

(Testimony of Allen F. Kipper.)

bell Company, other than they knew that I was working on it getting it ready to manufacture.

Witness further states that he can't recall the names of the people that he sold them to right now; that the Stanfields were related to him. One of them was a brother-in-law and the other was his brother; that the one that he thought went to La Habra was sold to the fellow that rented his house but he couldn't think of his name. He either paid him fifteen or eighteen dollars for it. Shaler was his name.

Q. What month do you now recall that you sold Shaler one?

A. I don't remember. I know that I sold him [102] one then, because I collected the money for it myself.

Q. Do you mean now to tell the court that you sold one to Shaler in January or February, 1919?

A. Yes; it was before—I sold it to him before the time that the money was turned in to—or that Dick Smith was selling, and that was before April or March of 1919.

And in further testimony witness stated that Dick Smith was not associated with him until after these orders were entered and that when he began to keep the records that have been introduced in this case, he and Smith were partners, and that this particular set sold to Shaler, who then lived in La Habra, was sold before his association with Dick Smith, but how long before he couldn't say exactly. He took them out there

(Testimony of Allen F. Kipper.)

himself and collected the money when he gave them to him. Shaler paid cash for them.

Witness also testified that he gave one pair to Mr. Ratliffe, Manager of the Aluminum Honeycomb Company, one of the first pairs that they made; that they had a record of that—of his job; that it was put on his job ticket and he thought that was in March.

Q. You have a record of it. Why did you keep a record on his job and not on the other jobs?

A. Because we gave it to him. We made a record on his job that we had given him a windshield, see?

Witness continues that it was given to him down at the shop and they made him a present of it; that they made a record of it on his job ticket; that they had given him a windshield.

Q. Was it purely voluntary on the part of Adams-Campbell Company?

A. No. The reason for the record being put there was [103] that we hoped to get enough business to pay for that windshield, see?

Q. Well, you were telling him then that you were making him a present of this, and so you made a record of the fact that you were making the man the present of a windshield?

A. No; it didn't state anything like that. We put on— I will tell you what we did. We put on the ticket—on his job, a charge against that windshield, or for that windshield, and we figured when we got enough business to cover up— to cover the windshield, why, we would be square, see?

(Testimony of Allen F. Kipper.)

Q. (By The COURT). You mean that you intended to get your pay for that windshield out of the profit of his business? A. Yes.

Q. (By Mr. KELBY). Now, then, Mr. Kipper, how old are you?

A. How old? I am thirty years old.

Q. And you enjoy a good memory?

A. Pretty good.

Q. Out of a possible fifty wings that you manufactured between the first of the year 1919, and April 15th of that year, you are able to recall the gift and sale of but five; is that true?

A. That is all I recall the names of right at present; yes. You see, I sold some to people that I really wasn't acquainted with and make no real impression on me of who they were sold to.

The COURT.—Why do you fix the date of April 15th, Mr. Kelby?

Mr. KELBY.—Because it is a date fixed in one of these records, I think, that has been introduced, your Honor.

(Counsel corrects Mr. Kelby.) April 25th. [104]

Continuing witness testifies that Mr. Venske paid him by check and that he doesn't recall what the amount was that was paid. He used to charge anyway from fifteen to twenty dollars for them, depending upon what he could get. He could not remember the date of that check; upon what bank it was drawn nor about what time; only that he was paid; that he knew it was a long time after he sold him the wings before

(Testimony of Allen F. Kipper.)

he got the money; and that he had known Venske, and Venske had done him a favor at one time, and he felt a kind of hesitancy about asking him for the money right away; that probably he should have made a gift to him, but he didn't.

Q. Now, I will ask you again if you recall the time of the payment by Mr. Venske to you, whether it was a month after the delivery or two or three or four or five or six.

A. I should say, somewhere in the neighborhood of a couple of months or so after I sold him the stuff.

Q. That would be some time in the summer of 1919?

A. Well, it was early, because I moved from a place that I was living there. I moved in August, and he paid me quite a while before I moved, so it must have been— it was some time in between June—some time between June and March that he paid me.

Q. Well, now, perhaps you can tell us definitely to whom the check was payable?

A. It was made payable to me.

Q. In your initials or in your full name?

A. A. F. Kipper.

Q. And your full name——

A. Well, I don't know whether it was made— I guess it was just my initials. It was made payable to me, I know.

Q. Your full name is Allan F.? A. Allen F., yes.

[105] Q. It was not made to the Kipper Company, was it? A. No.

(Testimony of Allen F. Kipper.)

Q. The Kipper Company wasn't in existence at this time? A. No, it wasn't.

Q. That wasn't brought into existence until September of 1919, was it?

A. September of 1919, I don't think it was brought into existence then. I don't remember the exact date, but it might have been along about that time.

Q. How soon was it after you had consulted an attorney to see whether you could get around the Keller patent, and how did you begin to manufacture these devices by hand?

A. After we had decided to go into the manufacturing was after we had completed our hand ones and saw that they were going to sell, and that it was a practical design and so forth, why, then we went in this deal with Smith, and Mr. Gable was the first one to consult with an attorney about it, and he didn't quite understand— well, in fact, he didn't know anything very much about the mechanical end of it, so he said I had better go up with him later. So we did. I think it was some two weeks or so, or maybe longer than that afterwards. At that time we were very busy. We were working night and day and I didn't have much time to get away and put time to this. That is the reason that he took care of it. My time was occupied there in the shop. And so I finally did go up with Mr. Gable, and his attorneys, Hazard and Miller, told us at that time that he could get us a patent on it, and that we were all right, and to go right ahead and make it.

(Testimony of Allen F. Kipper.)

Q. Do you remember when you made your first visit to the office of Hazard & Miller to talk about it?

A. It was shortly after we commenced— when we made this deal with Smith, and really went in the manufacturing, why, we [106] then commenced to investigate about it.

Q. So that when you entered into this arrangement with Mr. Smith, you hadn't up to that time consulted any patent attorney?

A. It was when we entered into this arrangement with Smith that we meant to go into the business of making a quantity, and we consulted with this attorney to advise us if we were all right, we didn't care to get into something that we were going to get into an infringement of somebody.

Q. Exactly. And at that time you had before you the consideration of the Keller patent?

A. No, we didn't. We had the Keller patent, yes, but we didn't have, say, this windshield before us.

Q. Yes. Now then, I want to get back to one thing: When was it that you consulted Hazard & Miller for the first time in order to be advised as to whether the device that you were manufacturing, or, rather, proposed to manufacture, was an infringement?

A. Well, it was right along the time that we made the deal with Mr. Smith. That was March or April, 1919, according to those records. Up to that time we had practically manufactured just a few, that is all.

Q. And you went to these patent attorneys about

(Testimony of Allen F. Kipper.)

March or April before you began manufacturing in merchantable quantities, is that right?

A. Well, yes, you might say before we began manufacturing in quantity, to amount to anything.

Q. Yes. Now you had previously examined the Keller patent, hadn't you?

A. Well, it was along about—when I first started on this [107] device, that is, to make the models, I hadn't seen the Keller patent at that time. It was really—I don't know how it happened to be, but this thing was made just as it was without—at first without my seeing the Keller patent; but before we went into the manufacture of it we did see the Keller patents and had the Keller patents.

Q. Well, how did you come to learn of the Keller patents?

A. How did we come to learn of the Keller patent?

Q. How did you, not "we", but how did you?

A. Oh, how did I come to learn of the Keller patent?

Q. Yes.

A. Well, when we commenced to go into the business, why, we investigated to see what about patents, and so forth, and if were were all right in making this stuff.

Q. Well, when did you get a copy of the Keller patent for the first time to read it?

A. We had a copy of the Keller patent some time——

Q. You had a copy of the Keller patent——

(Testimony of Allen F. Kipper.)

A. Yes, some time along in—I think we had it before—it was either just before this deal with Smith or just after, that we got that. I believe it was just after we made the deal with Smith.

Q. Who called your attention to the existence of the Keller patent?

A. I don't remember who called our attention to it.

Q. Having seen and become familiar with the Keller patent, you discovered that the name of Hazard & Miller appeared on the face of it as attorneys for Keller, did you? A. Yes, sir.

Q. And so with that in mind you set out to see Hazard & [108] Miller?

A. No, no; it wasn't necessary that we go to Hazard & Miller. Hazard & Miller had sent us a good deal of business at that time. That is the reason that we went there.

Q. Well, you knew that they were the same attorneys?

A. Well, I don't know as we did at that time, whether we had the patent before we went or after we went to them.

Q. Well, you had examined the drawings, hadn't you?

A. Well, I am not positive whether it was before or after that we went to Hazard & Miller that we examined them.

Q. (By The COURT). Well, you had seen the mechanism of the Keller invention on machines, hadn't you?

(Testimony of Allen F. Kipper.)

A. Why, no, I hadn't, not until after we had built the first ones. We saw it later on machines, but when the first ones I made—I might have seen it, but never examined the Keller mechanism on a machine.

Q. Well, you had seen windshield wings?

A. Yes, sir, I had seen lots of them. There was probably ten or fifteen different kinds made at that time.

Q. (By Mr. KELBY). Will you name a half dozen that were made at that time, other than those manufactured by you or by Mr. Keller, or by the Hartford Windshield Company?

A. Well, I can't name them——

Q. This is in January or February.

A. Well, I know one of the most important at that time. That is, they were doing as much business or about as much as anybody. That is the M. & M. Manufacturing Company. They made what they called the—oh, I don't remember just what they did call it. Then there was a fellow in San Diego—a fellow by the name of Miller, was making one, and a man by the name of [109] Gaudell, was making one, and I believe that the National Windshield Wind Deflector was made then too.

Q. And these were all substantially similar in their structure?

The WITNESS.—Well, they all had a sheet of glass on them, but the hardware was somewhat different on all of them.

Q. Yes, there was some slight differences, but were

(Testimony of Allen F. Kipper.)

the differences that you observed important differences?

A. Well, it was a change of design, and I understand that they had all—well, the National, had a patent on theirs, or have got one on it. And their means of holding the glass and their means of clamping the windshield was slightly different.

Q. The information that you derived respecting the composition of the particular windshield under construction was derived from your observation based upon the windshield wings that you saw at that time attached to cars moving around the city?

A. My idea in designing this particular design of wind deflector was to have something that looks nice, so it looks good to the eye of the people. That is what sells it; and to design something that had a good mechanical appearance, and that looked well on the car, and that you could cut in fancy shaped glass, something that you can't do with the hand clamping type.

Q. And Mr. Miller, or Hazard & Miller, the patent attorneys, told you that the Keller patent could be infringed, did they not?

A. Told me it could be infringed?

Q. Yes.

A. No; they told me it wouldn't be infringed,

Q. Told you it wouldn't be infringed? A. Yes.

Q. And so they prepared drawings and specifications for and in your name?

(Testimony of Allen F. Kipper.)

A. No, they didn't. I furnished them with one of the devices to work from.

Q. Yes. And they prepared an application founded upon the devices that you had presented?

A. That I had furnished them.

Q. And signed their names as attorneys for you?

A. Yes.

Q. To that application? A. Yes, sir.

Q. Tell the Court when the clamp discs or the bracket here which extends longitudinally along the end of the glass were made.

A. Well, I don't remember distinctly the date that the master pattern was made, but we commenced or made the pattern for manufacturing, that is, quantity. There is some twenty [110] odd or eighteen out of this is a flask. They were made—I don't know as we made that many at that time. I think we made a half dozen or so first, of brass ones. They were made on these original orders starting in March and along there, and we had one pattern that we made in the shop, that is, built it up out of brass. That is, this thing was a solid piece of brass and shaped up on the shaper to form the first pattern.

Q. Are you speaking of the entire mechanism, or part of it?

A. I am speaking now of this particular part which we call the glass support.

Q. Now when was the pattern for the glass support made?

A. The master pattern was made prior to March

(Testimony of Allen F. Kipper.)

5th or April 29th, whatever the date of those orders are. The other patterns, that it, the patterns for the manufacturing of them, were made--must have been made after that date.

Q. Well, now, will you tell the Court when this particular casting which forms a part of Exhibit T was made? A. I don't know when it was made.

Q. Well, can you tell us then when the first castings were made.

A. No, I don't know the exact date when the first ones were made. (Tr., pp. 149-181.)

And witness further states: "I don't know who made the first castings. I have an idea, but I am not sure that they made them. The castings were not made in the shop of Adams-Campbell Company. They didn't do any casting. I think they were either made at the National Brass or the Ferrell Brass Foundry. I don't know when; nor am I able to tell the Court now the date of the first castings made for me by Ferrell."

Q. And the castings disclosed by the written evidence introduced in this case is a record of the earliest castings that were made for you?

A. No; that is the earliest record of castings we have, but any work that was done and charged to shop expense we don't know and have no means of knowing how it was charged up.

Q. I will ask you again Mr. Kipper, if it is not true [111] that the particular casting here which you have designated as glass supports in connection

(Testimony of Allen F. Kipper.)

with Exhibit T, were not made by the National Brass Works?

A. Why, I couldn't tell whether they were or not.

Q. Now, is it not true that these records of the castings used in Exhibit T were the castings bought on these orders?

A. I couldn't say whether they were or not, because there is no way of telling. I don't know whether they are or not.

Q. The truth is that this casting which is a part of Exhibit T was made after April 27, 1919?

A. No, it wasn't.

Q. Do you know whether it was or was not?

A. No, I know that it wasn't, because I sold it before then. It couldn't have been——

Q. That is simply your process of deduction, isn't it?

A. Well, it come off of Mr. Venske's machine, and how could he get castings off of his machine.

Q. You are simply reasoning that if you sold it prior to April 27th, that the castings have been made prior to that time; is that not so?

A. Why, certainly; they couldn't have been made any other time.

Q. I hand you a windshield wing identified in this case as Plaintiff's Exhibit 2 and ask you to state whether that is not the windshield manufactured by you? A. It is.

Q. Can you tell the court when the casting for that exhibit was made?

(Testimony of Allen F. Kipper.)

A. I don't know when it was made.

Q. Will you point out to the court, after comparing Exhibit T with Plaintiff's Exhibit 2, the difference in the castings, if any?

A. These have steel rods and are both practically just alike.

Q. And were they made from the same molds?

A. I couldn't [112] tell that, whether they were or not.

Q. As far as you now see, they were made from the same molds.

A. I couldn't tell from that. If I could check this all over here, I could tell whether it was made from the master or from other patterns.

Q. By whom was Exhibit 2 made, do you know?

A. I don't know. If I had some means of measuring that I could tell whether it was made from the master.

Q. Then you have changed the dies, the patterns for the support there? A. For this piece?

Q. Yes, from the time that you went into quantity production down to the present time.

A. This particular design, I don't believe we ever made any change, that is, any radical change. We might have made minor changes in the weight of the material, or something like that, but I don't know of any.

Q. Now, you are referring to the glass support in Exhibit 2? A. The glass support, yes.

Q. (By Mr. TOWNSEND). In regard to this

(Testimony of Allen F. Kipper.)

two-part clamp of Exhibit T, I understand that this clamp has been in use for a considerable period of time. It is made of brass——

A. It is made of steel and is tightened by means of this hand wheel and clamp screw.

Q. Is that spring steel or cast steel?

A. No, it is ordinary band iron.

Q. What is the effect of clamping this very tightly upon its pivots. A. You bend the clamp.

Q. And that, in a measure, would account for the clearance that would appear if the clamp was put back into the original die. A. No, it would not.

Q. Well, it would account for some clearance?

A. Yes; but you can tell it in a minute. If you are familiar with die work you can tell it in a minute.

Q. The point I am getting at it just the mere matter of fact that a spring plate forming a part of the clamp, under clamp action for a considerable period of time, does bring about [113] a slight distortion of the clamping members?

A. Yes; but it would be impossible to do what this clamp has done here. When there is a distortion of this clamp as we have here, that thing will pull down and spread, but it won't affect that curvature. It would be impossible to pull that tight enough around the rod to do that.

Q. But you have had cases of distortion.

A. I have seen cases of distortion. This present clamp has never been distorted, I can tell, from looking at it.

(Testimony of Allen F. Kipper.)

Q. (By The COURT).—You are trying to find out if you screw that on it will distort it, and the distortion will remain if you loosen it up again. Is that what you are trying to get at?

Mr. TOWNSEND.—Yes. When the steel reaches a certain point, it will not resume its original position.

Q. Now, do I understand that the clamp of Exhibit 2, such as is constructed by the defendant, was made on these dies, which are in evidence as Exhibit G?

A. It was made on those dies, yes, sir.

Q. Now, on those dies do you see anything which corresponds to the trademark "Kozy Wings" and the design of the wings?

A. No; it isn't made in that die; it is a separate operation.

Mr. TOWNSEND.—I just wanted to have that point clear, whether that particular mark was put on there with the same operation or a separate operation. (Tr., pp. 181-9.)

Redirect Examination by Mr. HARRIS.

Q. Mr. Kipper, in regard to this distortion of Exhibit T, the distortion of the clamping member, I lay one of these members on top of the male portion of this die, and I will ask that you look in the hole there and tell us if that goes down to the die or whether there is a space there.

A. There is a space there. If pressure were applied [114] between these clamping members as it is applied between the screw it would tend to force that down. Those clamps absolutely have not been dis-

(Testimony of A. Herman Venske.)

torted. If they were distorted it would bend it down in the middle. So that it would fit more tightly and not fit on the edges.

Testimony of Mr. Venske, for Defendants (Recalled).

Mr. VENSKE, recalled for further cross-examination by Mr. KELBY.

Q. Mr. Venske, you have detached your windshield wings from your car and brought them here, or one of them? A. One of them.

Q. And that has been introduced in evidence in this case? A. Yes, sir.

Q. Have you been promised a new pair in substitution of those? A. No, not that I know of.

Q. Well, do you know? Has Mr. Kipper told you that he would furnish you with a new pair?

A. Oh. Why, I asked for my windshield, when court was dismissed, and he says they were not through with it; if I couldn't get it, I would get a new pair.

Q. He told you that?

A. If I couldn't get this one, yes.

The COURT.—That was after you had brought it here, was it? A. Yes, just a few minutes ago.

Q. (By Mr. HARRIS). Mr. Venske, was any promise made to you to give a new pair before you came here? A. No, sir.

Q. (By The COURT). Have you any memorandum, any book or anything in regard to this Perris land, to show when the day was that you were down there?

(Testimony of A. Herman Venske.)

A. No. I was busy—only this: I have got the man's name, and Mr. Spickerman come to me—come to the house there three or four times. He was in the real estate business, and he wanted me to look this land over. He wanted me to make this trade. And I didn't have time only on Sunday or a holiday, so I promised to go out there on Washington's birthday, and I did.

Q. Any writing to show that? That is what I want to know? A. Well, no, I don't know that I have. [115]

Testimony of Allen F. Kipper, for Defendants (Recalled).

ALLEN F. KIPPER, recalled by defendants, testified:

Redirect Examination, ALLEN F. KIPPER.

That as to Defendants' Exhibits "A", "B", "C", "D", "E" and "F", they were requisitions on the National Brass Company for castings, from April 29th to May 19th, 1919, that the Exhibits are in his own handwriting and that they were written on the dates marked on the order. (Tr., pp. 190-4.)

Defendants offer in evidence the following patents:
To Vickery, No. 132,633, Defendants' Exhibit "U".
To Weiderer, No. 381,452, Defendants' Exhibit "V".
To Maun, No. 751,526, Defendants' Exhibit "W".
To Olson, No. 783,383, Defendants' Exhibit "X".
To Volliffe, No. 1,062,402, Defendants' Exhibit "Y".
To Tischler, No. 1,110,973, Defendants' Exhibit "Z".

(Testimony of James T. Barkelew.)

To La Bonte, No. 1,184,652, Defendants' Exhibit "Z-1".

To Freeman, No. 1,225,608, Defendants' Exhibit "Z-2".

To Hoffbauer, No. 1,018,973, Defendants' Exhibit "Z-3".

To Wensinger, No. 1,219,513, Defendants' Exhibit "Z-4".

To Clark, No. 1,093,974, Defendants' Exhibit "Z-5".

To Baldwin, No. 1,078,765, Defendants' Exhibit "Z-6".

French Patent No. 460,778, Defendants' Exhibit "Z-7". (Tr., p. 195.) [116]

Mr. HARRIS.—That completes our case, your Honor.

Mr. TOWNSEND.—Now, in connection with these various citations, both foreign and British patents, Mr. Harris, I will call on you to declare on which one you consider your one best reference.

Mr. HARRIS.—We consider that French patent our best reference. (Tr., pp. 206-8.)

Testimony of James T. Barkelew, for Plaintiff.

JAMES T. BARKELEW, called as a witness in rebuttal by plaintiff, testified:

I am a patent solicitor in Los Angeles, California, and have been for fourteen years. I am the same James T. Barkelew whose affidavit has been filed in this case under Rule 48.

The Vickery Patent is a patent which shows a mir-

(Testimony of James T. Barkelew.)

ror support. In comparison with the structures there, it is not mounted upon a rod. It has no vertical adjustability upon one pivot. The structure is such that it is not a solidly constructed structure that could be used even if it were a [117] transparent shield that could be used any place on an automobile, largely because it would not stand the vibratory strain. The only thing that he claimed about that was these double joints here and the swinging of it. That is true also in combination with the specific mounting of the shield on the longitudinal rod, that the rod itself is mounted on. This particular mirror is mounted on a single stud. That single stud could never be used, in my opinion, to mount a glass windshield on. A glass windshield would never stay in position; it would break and shatter.

Mr. HARRIS.—If I were allowed to ask the witness one question, I think perhaps I might expedite matters:

Q. There has been a great deal of talk here about vertical adjustability. Do you contend that that can be adjusted vertically on that rod? A. No.

Q. I show you now Plaintiff's Exhibit No. 4, which purports to be a model of the Keller patent. Now, you spoke of vertical adjustability; is there any vertical adjustability in that device?

A. No, there is no vertical adjustability there, Mr. Harris. The point that I am speaking of, though, in connection with the mounting of the shield on the rod,

(Testimony of James T. Barkelew.)

with the spaced points of support, is the main feature that is not shown structurally in this patent.

Mr. HARRIS.—These shields here had a vertical adjustability. In other words, they could be moved up and down after they are secured on the edge of the windshield, because this rod slides on this shield. I think there is no vertical adjustability here, and I think there is no reason [118] to refer to any adjustability on this patent, that is all.

Q. (By Mr. TOWNSEND). In this Vickery patent, are there any means for locking the joints with a single point. A. No.

Q. Is that not a distinguishing feature of the patent in suit, and also of Defendant's structure? A. Yes.

Q. Now, take the next patent. (Tr., pp. 210-215.) [119]

The WITNESS: The Weiderer, or second patent, shows a mirror support. The same objections really apply to this as applied to the first one I noted. It has its support at the top and bottom of the mirror. It has no support at all within the ends of the mirror. It would have to be supported in this case, if this structure were applied to an automobile wide wing, it would have to be supported at the top and bottom, so that the side wing glass would have to be shorter than the vertical length of the post in order to get these supports attached to the post above and below it. It has no means of securing the joints at all. It has no [120] means of frictionally holding the joints nor frictionally setting them at a certain point. The mir-

(Testimony of James T. Barkelew.)

ror's primary pivot is in its own plane. It is not offset from the plane of the glass—from the plane of the shield, as the rod is that supports the glass and the shield, but it is set in its own plane. That does not get the pivotal eccentric movement that is possible with the rod supports spaced from the glass. Now, with regard to both of these mirror supports, both of these mirrors are fully framed glasses. They are not held in such a manner that they could be unframed.

Mann shows another mirror support on a fully framed glass. Mann has a rod support at the back. That rod turns in this little bracket so that the mirror can be turned this way on that vertical rod, on the back of it (showing). The other joint on which the mirror is mounted, however, is a pivotal joint that is at right angles to the first pivot—to the primary pivot; so that there, there is no universal movement of the mirror or of the supported element about two pivots that form a universal movement, that is, about two parallel pivots, both of which move in a horizontal plane rather than in a vertical plane. There is no particular means here for tightening either one of these joints, and so there is no means of tightening both joints simultaneously. That particular construction, to be heavy enough to support a mirror in a stationary position, would be entirely inadequate and would have to be entirely reconstructed in order to support an automobile windshield.

Als on also shows a mirror support. This mirror construction is somewhat similar to that of the last

(Testimony of James T. Barkelew.)

patent, Mann. He shows a mirror that is mounted in a frame with a rod on the [121] back of a frame. In this case, though, there was no pivoting of the mirror on the rod in any way. The only pivot that is anywhere near the rod is a pivot that is horizontal rather than vertical. The mirror does not use the mounting rod as a pivot. There is a secondary pivot here, but that secondary pivot also has no universal function with the first pivot except in a vertical direction. It has no horizontal universal movement of the kind that the windshield has in a horizontal direction. There is a nut here for locking one of the joints, but there is no means here at all for locking both of the joints simultaneously.

Volliffee shows a wind screen for motor vehicles. My understanding of this is that this is of the general type known as the tonneau windshield. In this case this tonneau windshield comprises two pivotal panels without any stationary central panel, such as is usually used on a tonneau windshield, but each one of these pivoted panels is mounted on a pivot at its edge with its own flange. It only moves in this particular manner, that is, if you would move that particular piece around the pivot on its own edge. It has only that one single motion.

The COURT.—I call your attention to the fact that there seems to be an extension of the main glass.

The WITNESS.—That is the extension part of the glass [122] that projects beyond the frame. It is lettered with the letter "e" and it is shown in the

(Testimony of James T. Barkelew.)

drawings as being a solid part of the main glass. That can be seen most clearly from Figure 4 of the drawings. It will appear from Figure 3 of the drawings that that part might be separate, but Figure 4, which is a section, shows very clearly that it is integral with the main part of the glass and is not movable at all with respect to the main part of the glass, so that little curved projection "e" and the main part of the glass "a" move in a single pivotal movement about the single central pivot. (Tr., pp. 215-220.)

Tischler shows a pivotal bracket support for signs and mirrors. That is a device that is mounted on two pivoted supporting brackets instead of a single pivoted supporting bracket. It has a supporting rod, but the two pivotal supporting brackets which are numbered 3 in the drawings are located one above and one below the mirror or sign, in that position where they can be applied to an automobile windshield, or, if they were applied to an automobile windshield, the side wing would have to be just that much smaller in vertical dimension in order to allow the brackets to be set to the post. There is nothing here to set these joints except some set screws. Set screws usually set things positively, not frictionally.

Q. (By Mr. TOWNSEND). To set a joint, you mean to lock it?

A. Yes, set them positively. I would take it from the drawings here that this device is made especially to be set in some one particular position and then left in that position. It is not made to be strong-armed to

(Testimony of James T. Barkelew.)

different positions at different times if it is made to be set frictionally at all, and there are no means here at all of frictionally setting the two joints, neither are there any means for setting both the [123] joints with one action simultaneously.

La Bonte shows a windshield of a general type that we know as a tonneau windshield, and shows a central panel with two pivoting panels, one on each side. These two pivoted panels are pivoted on centers that are in the plane of those panels themselves. Each pivoted panel only has a movement of simply swinging on that single pivot.

Q. When you say the pivot is in the plane of the panel, does that mean that the pivots are at the edge of the panel A. At the edge of the panel.

Q. Like the hanging of an ordinary door with its hinges? A. Yes, exactly.

The WITNESS.—Freeman shows a much similar pivotal construction as applied to a Keller shield. That pivot is merely for the purpose of throwing the glass shield around in front of the windshield, or throwing it straight ahead or any other position around its single, simple pivot, so as to get it out of the way when it is not in use.

Q. (By Mr. TOWNSEND). When you say a much similar pivot, you are referring to the pivot of the patent immediately preceding that you have spoken of?

A. Yes. I was going to explain just what this was. This is the pivot—a single, simple vertical pivot

(Testimony of James T. Barkelew.)

that is in the line of the plane of the glass, that is, at the edge of the glass, so that the glass only has that single, simple motion. It has no universal motion at all.

Hofbauer shows a tonneau windshield that in all [124] essentials is the same as La Bonte's, and the remarks that I have made about La Bonte's apply with equal force to Hofbauer's.

Wensinger shows much the same general type of device as Hofbauer and La Bonte, except that he does not show a central immovable panel, and not having that central immovable panel he mounts his two side pivotal panels on pivots, or, rather, on pivot pins that are only at the bottom edge corner of each one of those pivoted panels. In other words, he has each one of those panels mounted on a vertical pivot that is in line with the edge of the glass, so that the glass only gets that single, pivotal, simple movement about that single pivot; but he only has a pivot pin at the bottom where he can mount that pivot pin in a socket that can be mounted on the back of the front seat, so that he does not have to have a socket at the top, or run a frame up there to mount that socket on. So far as the construction and the action and the swinging movement and the adjustment is concerned, Wensinger's device is precisely like Hofbauer's and La Bonte's plane of the glass, and that is at the bottom edge of the glass. The pivot in this particular case, however, is situated somewhat inwardly from one of the side edges of the glass. The only difference between this swinging panel of

(Testimony of James T. Barkelew.)

Clark's and the swinging panel of the last patent that I have mentioned is that the pivot, instead of being located at the corner, is located a little inside of the corner. He says in his specifications that he prefers to locate that pivot closer to one edge than to the other; but the panel is still only pivotally movable about a single vertical pivot. It has no universal motion whatsoever. If a device of that kind were applied to the side-wing, it would be necessary to permanently mount that single pivot out far enough [125] so that either the short end of this shield or the long end of this shield would clear the side post when you swung the shield from one position to the other. That would mean that the edge of the shield could not be thrown in—I mean the edge of the side wing shield could not be thrown in behind the main shield, because it would not reach the main shield in a case like that. It has that double pivotal movement on two spaced pivotal axes that make it possible to throw that edge in behind the main shield Baldwin shows a window-shield. The only thing I see in this patent that I would think that we were interested in in the least is this deflector 23. That deflector 23 is an opaque piece of material. It is a piece of sheet metal; is mounted on a horizontal pivot instead of a vertical pivot; is mounted only on one single pivot. It is put in that hood for the purpose of deflecting any wind current down away from a window. I am at a loss to see how that device could be applied to a windshield. (Tr., pp. 220-225.)

(Testimony of James T. Barkelew.)

Q. (By Mr. HARRIS). It is for the same purpose, that is, deflecting the wind from a window?

A. Yes. The specifications say it is for the purpose of deflecting the wind from the window.

The COURT.—Well, now, the pertinency of this patent, to my mind is, that the attachment to the glass there is like the defendant's attachment. Now, the original patent had in its specifications—one of its elements was fastening this glass from the top to the glass. This fastening came down to the bottom [126] at each end of this fastening. This element here appears in this patent, it seems to me now, doesn't it?

The WITNESS.—Well, your Honor, this rod here is a stationary rod that is mounted on the side of the building. This rod is not a shield-carrying rod.

The COURT.—But it is fastened to the glass, and this rod here has not these double joints to it.

The WITNESS.—I would not take it that it is fastened to the glass, from the drawings, your Honor. It is fastened to the window casing. That rod is fastened to the window casing. Now, it is fastened in that manner, and here is a bracket piece that supports this box 3, and that bracket piece is long enough and has this offset in it right there so as to carry the end of the box back against the end of the glass of the window. That is against the recessed glass of the window. Now, that rod is merely a stationary, supporting rod.

The COURT.—I see. I misunderstood it.

(Testimony of James T. Barkelew.)

Mr. HARRIS.—It is the same rod, your Honor, but it is turned around.

The COURT.—I see.

Mr. HARRIS.—It is the same rod, but it is fastened to the building rather than carrying the mirror.

The COURT.—I see now; I misunderstood it. Proceed.

The WITNESS.—The French patent, 460,778, Moreau. A means for supporting a single or a triple faced mirror. I take it that that is one of these triple mirrors where you can have one in front of you and one out to the side angularly, and another one out to the side angularly. The construction, as shown in that patent, embodies this rod, which is numbered 10, which has on it two clips, one at the top and one at the bottom of the [127] mirror. The mirror is numbered 19 in the drawing. Now, that rod runs through a socket. There are screw means and a sort of compression sleeve in that socket for holding the thing in place. I don't think it is necessary to describe those in detail. The patent describes them in detail. That socket is formed at the outer end of an arm which is numbered 3 in the drawing. That arm, which is numbered 3, is an arm that is stiff from end to end. It has no pivotal movement throughout its length, and the clamp at the rear end, which is numbered 2, clamps the supporting element 1. That supporting element, as I remember it, is referred to. The lower part, that is numbered 2 in Fig. 3, is integral with and stiff with the part that is numbered 3 in Fig. 3, so that the part

(Testimony of James T. Barkelew.)

that is numbered 3 in Fig. 3, after you clamp this whole thing to some stationary object, can't be turned on any pivotal joint at all. Now, the fact that those two pieces are integral is shown very clearly in Fig. 1, where the pivot 4 is shown in dotted lines. It is a regular hinge pin, and in Fig. 1 you can see where that other member 2, which is hinged to the main part, which I will call 2-3, where that through member 2 projects through an opening in the part 2-3, as any hinge does; so that this device has only a single movement about a single vertical axis.

Q. Where is that single axis?

A. That single vertical axis is on the axis of this rod 10, but it has only that single movement.

Q. And this member 3 is rigid with its point of support?

A. Absolutely rigid; intended to be so. (Tr., pp. 220-230.)

The COURT.—That is all of this witness. Any cross-examination?

(Witness continues (as a fact witness):

A. I was attorney for Mr. Keller, or patent solicitor for [128] Mr. Keller, in that particular re-issue application. Mr. Keller came to me about the 1st of April, 1919. He came to me after I had talked with Mr. Lillie, or Mr. Lillie had talked with me, about the situation, and I had said to Mr. Lillie that if he was going to do anything with this sidewing, he had better let me look at Mr. Keller's patent. Mr. Keller came up, I suppose sent by Mr. Lillie. He showed

(Testimony of James T. Barkelew.)

me his patent. I don't remember now whether Mr. Keller went downstairs to Hazard & Miller's office the first day he came to me, or a day subsequently, and brought back the files of the original application; but I do know that whether it was the first time he came or the second time he came, he did bring those files in by April 11, 1919, because that is the date on our records that show what we call the date of entry of the case in my office. That was the date when I was ordered to proceed with the re-issue application. When Mr. Keller brought up that original application file, and after I had looked over the patent and he had in that original application file, that is, Mr. Miller's copy of that application file, copies of some of the references that have been cited. As I remember the situation, there were either one or two of those references lacking, and I had to send and get the rest; but I told Mr. Keller at that time that if those were the best references that had been cited, I had no doubt but what his patent was not adequate; that it was not anything like commensurate with the novelty of his invention, as was shown by those particular references. I think there were only three, or at the most, four references cited in the original application. After I had told him that, he decided to have me go ahead with the re-issue application. I proceeded to get that ready. Mr. Keller signed the application—well, the application was filed on May 22, 1919, and Mr. Keller signed [129] it the length of time for the mail between here and Washington before that. The

(Testimony of Leonard Ruegg.)

intervening time was used up practically entirely in preparing the re-issue application.

The COURT.—What is the object of this testimony? I don't see any bearing it has on the case.

Mr. KELBY.—Well, your Honor, we are just simply showing here a connected set of circumstances to show that we were acting in good faith during all of this time to protect what we believed was a valid, basic patent; had diligence.

Mr. HARRIS.—We move to strike out the witness's entire answer as incompetent, irrelevant and immaterial, not responsive to any issue in this case.

Mr. TOWNSEND.—Your Honor, please, it has this bearing: They have interposed a defense of intervening rights. I suppose that is what they will claim the testimony is. Not intervening rights is only available where there has been negligence in the matter of a re-issue by the plaintiff. Now, this is to show due diligence in the re-issue.

The COURT.—Well, I will deny the motion and take the evidence. Proceed. (Tr. pp. 230*-234.)

Testimony of Leonard Ruegg, for Plaintiff (In Rebuttal).

LEONARD RUEGG, recalled for plaintiff in rebuttal, testified that he made castings for the glass supports of the defendant's windshields for the first time on May 3, 1919, but that he could not testify with the information at hand as to how many, because he did not have the total poundage or cost with him.

(Testimony of Leonard Ruegg.)

The Court then found in the papers submitted by the witness, an entry, March 3d, 1919, covering four castings windshield pattern, red brass. Witness then stated that he was mistaken in regard to the first castings being made on May 3d.

Counsel for defendant objected to witness reading from entries made by an office stenographer on grounds that it was secondary evidence. Testimony admitted and objection overruled with the understanding that original records would be produced.

Mr. HARRIS.—We understand that Mr. Kelby is to produce these sheets—originals of these sheets, and particularly he is to produce sheet No. 5, dated 1919, on which appears the entry, "March 8th, 4 castings windshield pattern red brass, 39 cents a pound."

On cross-examination witness stated there were certain entries [130] showing money charges dated March 8, 1919, for castings of windshield wings; that he had no really authentic record of it, and that he made different castings at different times of different parts. (Tr., pp. 234-243.)

Testimony of T. R. Gable, for Plaintiff (In Rebuttal).

T. R. GABLE, called on behalf of plaintiff in rebuttal, testified:

I am one of the defendants in this case and am a stockholder and officer of Adams-Campbell Company, co-defendant. Neither Adams-Campbell Company nor I personally have been interested in the Kozy

(Testimony of T. R. Gable.)

Wing Auto Supply Company. The Adams-Campbell Company, a corporation, and I individually have manufactured windshield wings according to the device, Plaintiff's Exhibit No. 2. At the outset the manufacturing was paid for by me, but was ordered by the Adams-Campbell Company. At this time, I do not bear any of the cost of manufacture or sale of the device, nor do I directly or indirectly, share in the expense or profits. I ceased to manufacture or sell, a year or more ago. The Adams-Campbell Company continue to make the device now. They manufacture for Kipper and Company. I financed the making of this device at the outset to the amount of $2000.00. That was in December, 1918, or January, 1919. At the time I began supporting the manufacture I did not consult with Mr. Kipper relative to the Keller patent until after he applied for our patent in July, 1919; that is Mr. Kipper's application for patent.

I have been acquainted with Dick Smith about five years. The first business arrangement between the Adams-Campbell Company or me individually and Dick Smith, relative to windshield wings was in February, 1919. At the start the only persons interested in the manufacture of our windshield wing were Mr. Kipper, defendant [131] herein and me. All the merchandise and labor furnished by the Adams-Campbell Company was paid for by Smith. I would not say positively that Simth's payment of August 21st made the Adams-Campbell Company whole, but I think it did.

(Testimony of T. R. Gable.)

(Questioned by the Court, witness testified):

Mr. Smith came to us—Mr. Kipper and ourselves—and asked us to manufacture or get him up a windshield. We already had the matter in mind and had a model of one there. That was along in December, 1918, or January, 1919. We made satisfactory arrangements with Smith by which we would manufacture these windshields, but we wanted to protect our individual interests, so we arranged to apply for a patent, which we did on July 22, 1919. There was no partnership arrangement with Smith; we were to manufacture for him at a certain price; we charged him so much for manufacturing. (Tr., pp. 243-249.) [132]

Case argued and submitted, and during the argument:

Mr. HARRIS.—If your Honor please, I can expedite Mr. Townsend's argument a little. We say we do not deny claims 8, 17, 21 and 23; 22 and 23 are infringed if they are valid.

The COURT.—17, 21 and 23?

Mr. HARRIS.—Yes, he does not need to take the time of the Court applying the claims to that structure.

Mr. TOWNSEND.—We accept the admission (p. 53 of argument).

The foregoing statement of evidence in conformity with Equity Rule No. 75 is hereby allowed and settled and certified to be a true and correct statement of

all the evidence introduced and received on the trial of said cause.

TRIPPET,
Judge.

Service of the foregoing Condensed Record acknowledged this .... day of March, 1922.

.....
Attorneys for Defendants. [133]

[Endorsed]: No. E-86—In Equity in the United States District Court for the Southern District of California, Southern Division, Clarence D. Keller et al., Plaintiffs, vs. Adams-Campbell Company, Inc., et al., Defendants, Condensed Record of Proceedings on Final Hearing under Equity Rule 75. Lodged Apr. 1, 1922. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Chas. E. Townsend, Attorney-at-Law, 909-917 Crocker Building, San Francisco, California, for Plaintiffs. [134]

In the United States District Court, in and for the Southern District of California, Southern Division.

In EQUITY—No. E-86.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, INC., (a Corporation); T. R. GABEL, A. F. KIPPER,

Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY; HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Defendants.

Praecipe for Transcript on Appeal.

To the Clerk of the United States District Court:

Please incorporate the following papers, documents and exhibits in the transcript of record on appeal in the above-entitled cause, omitting title of cause and omitting copying of all documentary exhibits:

(1) Amended Bill of Complaint.
J.E.K. F.W.H.

(2) Answers to Amended Bill of Complaint.
J.E.K. F.W.H.

(3) Conclusions of the Court, dated January 16, 1922.

(4) Final Decree filed February 11th, 1922.

(5) Petition for Order Allowing Appeal and Order Allowing Appeal.

(6) Order Allowing Withdrawal of Original Exhibits.

(7) Bond on Appeal. [135]

(8) Assignment of Errors.

(9) Citations.

(10) Order of Praecipe.

(11) All exhibits introduced on final hearing.

CHARLES E. TOWNSEND,
JAMES E. KELBY.
Solicitors for Plaintiffs.

Dated: March 23d, 1922.

[Endorsed]: Receipt of copy of the within admitted this 27th day of March, A. D. 1922, Ford W. Harris for Kipper et al., No. E-86—In Equity. In the United States District Court for the Southern District of California, Southern Division, Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Company, Plaintiffs, vs. Adams-Campbell Company, Inc., et al., Defendants, Praecipe for Transcript on Appeal, filed Mar. 27, 1922. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Chas. E. Townsend, Attorney-at-Law, 909-917 Crocker Building, San Francisco, California, for Plaintiffs. [136]

In the United States District Court, Southern District of California, Southern Division.

Hon. OSCAR A. TRIPPET, Judge Presiding.

IN EQUITY—No. E-86.

CLARENCE D. KELLER, et al.,
Plaintiffs,

vs.

ADAMS-CAMPBELL COMPANY, etc., et al.,
Defendants.

Remarks by the Court.

JAMES E. KELBY, Esq., of Los Angeles, California, for Plaintiffs.

Messrs. GRAHAM & HARRIS, by FORD W. HARRIS, Esq., of Los Angeles, California, for Defendants.

This case involves an alleged infringement by the defendants of what is called in the proceedings a windshield wing, and especially, concerning said windshield wing, the bracket by which the glass of the wing is attached to the other apparatus of the wing of the windshield.

This litigation turns largely and primarily upon the limitation in claim one of the original patent and the re- issue patent which, as an element in the claim, reads as follows:

> "brackets engaging said member at its upper and lower ends,"

That refers to the brackets of the wing of the windshield which hold the glass. The glass, according to this patent, [137] is held by a bracket that runs along up and down the glass and holds it at the top and the bottom. The defendants' device holds the glass by means of a clamp or fixture which attaches to the face of the glass, and does not extend to the ends of the glass.

The drawings and specifications in the original patent accurately describe the plaintiff's invention, as exhibited to the court. The claims in the original pat-

ent particularly point out and distinctly claim, in so far as the disclosures appear in said patent, the part, improvement, or combination which the patentee claims as his invention.

It is manifest that the patentee was not guilty of inadvertence, accident or mistake, in making the claims in the original patent in so far as the same are described in the drawings and specifications; that is to say, the drawings and specifications clearly describe this invention as exhibited to the court, and the claims read upon the description, and claim everything that is disclosed therein.

The defendants' bracket is an invention. It is a surprise to me that that which the defendants did could be done. The bracket will fit any glass. It is shorter and does not obstruct the view. It is believed to be more artistic. The defendants' bracket is not an equivalent of the bracket in plaintiffs' original patent, because it does not perform the same functions in the same way, but it performs the function of holding in the glass in an entirely different way.

Before the defendants did anything looking toward the manufacture of their device, they took the precaution, and incurred the expense, of consulting an attorney as [138] to whether or not their device would be an infringement of the plaintiffs' patent. Criticism is indulged in by the plaintiffs as to this conduct of the defendants, claiming that the defendants deliberately did what they did do. I think that the defendants did the right thing. They should not have undertaken to manufacture this device or in-

curred any expense concerning it without first consulting an attorney. The defendants certainly sought the advice of an attorney who was capable of advising them on the subject. After having this device, the defendants undertook the manufacture of their invention and undertook it prior to the time of the plaintiffs' application for reissue of patent. They expended some money and prepared to manufacture, and did manufacture, some of the devices as invented by the defendants. They did not expend a great deal of money. But I do not know that an estoppel or an intervening right can be measured by the amount of money expended in the manufacture or in the getting up the device, or in investigating their right to manufacture.

There is nothing disclosed in the patent, or in the original exhibit produced here, or in the drawings and specifications indicating that the plaintiffs or patentee ever thought of the device as made by the defendants, and the defendants' having made this device and its having appeared in public prior to the application for reissue by the plaintiffs, it does not seem to me that the plaintiffs should be entitled to a reissue of patent covering something which somebody else has invented, and which, it does not appear, that they ever disclosed to the public prior to the invention of the defendants. Of course, this would not be an invention, if it had been disclosed to the public by the patentee prior to the [139] invention of the defendants.

Without further discussion, I think the defendants occupy the position of one who has intervening rights and under those circumstances I think the plaintiffs are not entitled to a reissue of the patent as against the defendants.

The bill will, therefore, be dismissed. The defendants will prepare a decree and follow Rule 45 of this court.

Dated, January 16th, 1922.

[Endorsed]: No. E–86, United States District Court, Southern District of California, Southern Division. Clarence D. Keller, et al., v. Adams-Campbell Co., et al. Remarks by Court. Filed May 29, 1922. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [140]

In the District Court of the United States for the Southern District of California, Southern Division.

IN EQUITY—No. E–86.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., (a Corporation); T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY;

HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Appellees.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Chas. N. Williams, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing one hundred and forty (140) typewritten pages numbered from one to one hundred and forty, inclusive, to be the transcript of Record on Appeal in the above entitled cause pursuant to the praecipe of the Appellants filed herein, and contains a full, true, and correct copy of the Amended Bill of Complaint, Answers to Amended Bill of Complaint, Final Decree, Petition for and Order Allowing Appeal, Order Allowing Withdrawal of Original Exhibits, Bond on Appeal, Assignment of Errors, Praecipe, Condensed Record of Proceedings on Final Hearing under Equity Rule 75, and Remarks of the Court filed May 29, 1922. Said Record also contains the original Citation. [141]

I DO FURTHER CERTIFY, that the fees of the Clerk for preparing, comparing, correcting and certifying to the foregoing Record on Appeal amount to $41.15, and that said amount has been paid me by the Appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 29th day of May in the year of our Lord One Thousand Nine Hundred and Twenty-two and of our Independence the One Hundred and Forty-sixth.

[Seal] CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America in and for the Southern District of California.

By R. S. ZIMMERMAN,
Deputy Clerk. [142]

In the United States Circuit Court of Appeals for the Ninth Circuit.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs-Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., (a Corporation); T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY; HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD,

Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Defendants-Appellees.

Order Extending Time to and Including May 7, 1922, to File Record and Docket Cause.

For good cause shown it is ordered that plaintiffs-appellants may have an extension of time to and including May 7th, 1922, in which to file the above-entitled Appeal in the office of the Clerk of this Court.

W. W. MORROW,

Judge.

San Francisco, Cal., Apr. 4th, 1922 [143]

[Endorsed]: No. 3881. In the United States Circuit Court of Appeals for the Ninth Circuit. Clarence D. Keller etc., Plaintiffs-Appellants, vs. Adams-Campbell, Inc., etc., Defendants-Appellees. Order Extending Time for Filing Cause in Above-Named Court. Filed Apr. 4, 1922. Re-Filed May 31, 1922. F. D. Monckton, Clerk. [144]

In the United States Circuit Court of Appeals for the Ninth Circuit.

CLARENCE D. KEELER et al.,

Plaintiffs-Appellants,

vs.

ADAMS,CAMPBELL COMPANY, INC., et al.,

Defendants-Appellees.

Order Extending Time to and Including June 7, 1922, to File Record and Docket Cause.

It being shown to the Court that the condensed transcript of testimony has not been approved by opposing parties hereto, and that such failure to agree has not been due to negligence, it is ordered that plaintiffs-appellants may have an extension of time to and including June 7th, 1922, in which to file the above-entitled Appeal in the office of the Clerk of this Court.

W. H. HUNT,
Judge.

San Francisco, California, May 5th, 1922.

[Endorsed]: No. 3881. In the United States Circuit Court of Appeals for the Ninth Circuit. Clarence D. Keller, et al., Plaintiffs-Defendants, vs. Adams-Campbell Company, Inc., et al., Defendants-Appellees. Order Extending Time for Filing Cause in Above-named Court. Filed May 5, 1922. Re-Filed May 31, 1922. F. D. Monckton, Clerk.

[Endorsed]: No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Clarence D. Keller and Arthur C. Lillie, Doing Business as Hartford Windshield Company, Appellants, vs. Adams-Campbell Company, Inc., a Corporation, T. R. Gabel, A. F. Kipper, Individually, and A. F. Kipper, Doing Business as Kipper & Co., Harry W. Hahn, Doing Business as Harry W. Hahn Manufacturing Company; and Augustine S. Lockwood, Individually, and Augustine S. Lockwood, Doing Business as Kozy Wing Auto Supply Com-

pany, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed May 31, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Filed July 1, 1922. F. D. Monckton, Clerk.

No. 3881

United States

Circuit Court of Appeals

For the Ninth Circuit.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation, T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY; HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Appellees.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the fifth day of October, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3881.

CLARENCE D. KELLER et al.,

Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation, et al.,

Appellees.

Order of Submission.

ORDERED motion of appellees filed September 27, 1922, to strike from transcript of record "Remarks of the Court"; motion of appellants filed October 3, 1922, re taxation of costs, and cause on merits, argued by Mr. Charles E. Townsend, counsel for the appellants, and by Mr. Ford W. Harris, counsel for the appellees, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fifth day of February, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable WILLIAM W. MORROW, Circuit Judge; The Honorable FRANK. H. RUDKIN, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF A CERTAIN DECREE AND JUDGMENT.

By direction of the Honorable William B. Gilbert, Erskine M. Ross, and William H. Hunt, Circuit Judges, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the Clerk, and that a Decree and Judgment be filed and recorded in the Minutes of this Court in each of the said causes in accordance with the opinion filed therein: Clarence D. Keller and Arthur C. Lillie, Doing Business as Hartford Windshield Company, Appellants, vs. Adams-Campbell Company, Inc., a Corporation, et al., Appellees. No. 3881. * * *

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3881.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation, et al.,

Appellees.

Opinion U. S. Circuit Court of Appeals.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Before GILBERT, ROSS and HUNT, Circuit Judges.

ROSS, Circuit Judge.—The basis of this suit was a reissued patent of July 20, 1920, to the Appellant Keller for claimed new and useful improvements in windshields for automobiles. The original patent to him was issued November 12, 1918, in which he stated: "It is common practice to fit automobiles with a transversely extending transparent shield which is secured within a suitable frame and mounted upon the dash of the vehicle body. Due to the narrow width of these shields, the wind draws in around the edges

and creates considerable draft within the vehicle. It is the principal object of this invention to provide auxiliary transparent shield members which may be secured in an adjustable manner at the opposite sides of the main windshield and more thoroughly prevent the creation of a draft through the vehicle body.

"Another object of this invention is to provide a windshield of the above class which does not require the use of a large mounting frame and may hereby be held in position without obstructing the view.

"Another object of this invention is to provide a peculiar pivotal mounting for the shield which will allow it to be universally moved throughout a horizontal plane and in relation to the edge of the main shield.

"Another object of this invention is to provide simple operating means for instantly locking the pivotal mounting in any desired position.

"It is a further object of this invention to provide a windshield which will be neat in its design, simple in its construction and will act to enhance the appearance of the vehicle upon which it is mounted rather than to depreciate it."

Accompanying the foregoing with illustrative drawings and their explanations, the patentee made the following three claims:

> "1. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends,

means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, and means whereby the two joints of the shield may be simultaneously locked.

"2. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, means whereby the two joints of the shield may be simultaneously locked, and means for detachably securing the shield upon said post.

"3. In an auxiliary windshield, a rectangular windshield glass, upper and lower supporting brackets having channels in which the glass is mounted and having alined bearings at one side of the glass, a spacing sleeve having its ends rotatably mounted in the bearings, a shaft extending through the bearings and through the sleeve, a lock-nut upon the shaft for tightening the bearings upon the sleeve, a knuckle-joint bracket having two parallel bearings; said sleeve being mounted

in one bearing; there being a horizontal bore through the bracket and connecting the bearings and there being a passage through the sleeve in line with the bore and there being a tapered face upon the shaft in line with the bore; a lock-bolt mounted in the bore and having a tapered end engaging said tapered face, a mounting bracket having ears between which the other sleeve bearing is mounted, and a hinge pin inserted through the ears and bearing and having a recess to receive the other end of the lock-bolt; said mounting bracket being adapted for engagement with the side post of a windshield; so that by loosening the lock-nut upon the shaft the parts may be loosened to move the windshield to a desired position and then by tightening the lock-nut the parts may be held rigid with the main windshield."

In the reissued patent of July 20, 1920, the first three claims are identical with the three claims of the original patent, besides which there are twenty other claims.

That there is nothing of a pioneer nature in Keller's device is abundantly shown by the numerous exhibits appearing in the record of windshields and deflectors, of one kind and another, attached to automobiles long before Keller entered the field. Both his drawings and specifications show that his shield is attached to the machine by brackets that run up and down the glass, holding it at the top and bottom, whereas the appellee's

device holds the glass by means of a fixture attached to the face of the glass and which does not extend to either of its ends.

That for one device to be the equivalent of another it is essential that the former must perform the same function of the latter in substantially the same way is thoroughly settled law. Machine Co. vs. Murphy, 97 U. S. 120, 125; Werner vs. King, 96 U. S. 218, 230; Simplex Window Co. vs. Hauser Reversible Window Co., 248 Fed. 919, 926; Dey Time Register Co. vs. Syracuse Time Recorder Co., 152 Fed. 440, 451; Walker on Patents, sec. 348; Curtis, Patents (4th Ed.), sec. 310.

The evidence shows that prior to any knowledge on their parts of the Keller patent, the appellees had been working on their device, and had made and sold a few of them, but subsequently learned of and became familiar with the original Keller patent, and before proceeding with the manufacture and sale of their own device, and prior to the making of the application for the reissued Keller patent, they applied to the attorneys who procured the original Keller patent for information as to whether their device was an infringement upon that of Keller, saying that they did not wish to infringe, and being told that it would not be an infringement, they proceeded with the manufacture and sale of their own on a substantial basis. We, therefore, think it clear that the appellees had and have such intervening rights as were properly protected by the court below. See Coon vs. Wilson, 113 U. S. 268; Topliff vs. Topliff, 145 U. S.

156; Dunham vs. Dennison, 154 U. S. 103, 111; Auto-Piano Co. vs. American Player Action Co., 222 Fed. 276.

The decree of the Court below is

Affirmed.

[Endorsed]: Opinion. Filed February 5, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3881.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation, T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY, HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY, and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Appellees.

Decree U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the Southern District of California, Southern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellees and against the appellants.

It is further ordered, adjudged and decreed by this Court, that the appellees recover against the appellants for their costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered February 5, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the twelfth day of March, in the year of our Lord one thousand nine hundred

and twenty-three. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable FRANK H. RUDKIN, Circuit Judge; The Honorable FRANK S. DIETRICH, District Judge.

No. 3881.

CLARENCE D. KELLER and ARTHUR C. LILLIE, etc.,

Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation, et al.,

Appellees.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert, Erskine M. Ross, and William H. Hunt, Circuit Judges, before whom the case was heard, it is ORDERED that the petition, filed March 7, 1923, on behalf of the appellants for a rehearing of the above-entitled case be, and hereby is denied.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3881.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation, et al.,

Appellees.

Order Staying Issuance of Mandate Under Rule 32 Until After Supreme Court U. S. Passes Upon Petition for Writ of Certiorari, Etc.

Upon application of Mr. Charles E. Townsend, counsel for the appellants, and good cause therefor appearing, ORDERED mandate of this Court under Rule 32 in the above-entitled cause stayed to and including April 18, 1923.

It is further ordered that in the event the petition for writ of certiorari is filed by counsel for the appellants with the Clerk of the Supreme Court of the United States within the time extended, that the said mandate of this court be and hereby is stayed until after the Supreme Court passes upon the petition for issuance of said writ.

Dated: March 19, 1923.

FRANK H. RUDKIN,
United States Circuit Judge.

[Endorsed]: Order Staying Issuance of Mandate, etc. Filed March 19, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation, T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY; HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and forty-eight (248) pages, numbered from and including 1 to and including 248, comprised in the "Book of Exhibits," and the foregoing one hundred and seventy-nine (179) pages, numbered from and including 1 to and including 179, comprised in the

"Transcript of Record," excluding the original exhibits, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under section 3 of rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 12th day of April, A. D. 1923.

[Seal]

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Clarence D. Keller and Arthur C. Lillie, doing business as Hartford Windshield Company, are appellants, and Adams-Campbell Company, Inc., T. R. Gabel, A. F. Kipper, Individually, and A. F. Kipper, doing business as Kipper & Company, Harry W. Hahn, doing business as Harry W. Hahn Manufacturing Company, and Augustine S. Lockwood, individually, and Augustine S. Lockwood, doing business as Kozy Wing Auto Supply Company, are appellees, No. 3881, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of California and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-third day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 29,589. Supreme Court of the United States, October Term, 1922. No. 1039. Clarence D. Keller et al., etc., vs. Adams-Campbell Company, Inc., et al. Writ of Certiorari. No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 30, 1923. F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 3881

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as Hartford Windshield Company, Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., a Corporation; T. R. GABEL, A. F. Kipper, Individually, and A. F. Kipper, Doing Business as Kipper & Company; Harry W. Hahn, Doing Business as Harry W. Hahn Manufacturing Company, and Augustine S. Lockwood, Individually, and Augustine S. Lockwood, Doing Business as Kozy Wing Auto Supply Company, Appellees.

RETURN TO WRIT OF CERTIORARI

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said writ a certified copy of:

(1) Printed Transcript of Record filed July 1, 1922;

(2) Printed "Book of Exhibits" filed September 23, 1922;

(3) Physical Exhibits: Plaintiffs' 2 (broken), 3 and 4 and Defendants' "T";

(4) Documentary Exhibits: Plaintiffs' 1, 5 and 6, and Defendants' A, A2, B, B2, C, D, E, F, H, I, J, K, L, M, N, O, P, Q, R, U, V, W, X, Y, Z, Z1, Z2, Z3, Z4, Z5, Z5, Z6, Z7, and Translation of French Letters Patent No. 460,778, Defendants' Exhibit "Z7," and Affidavit of Elizabeth B. Graham as to Correctness of Translation;

and do hereby send the said certified copy of said Transcript of Record and Book of Exhibits, together with the original exhibits, to the said Supreme Court as the Return to the said Writ of Certiorari.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 31st day of July, A. D. 1923.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.
[Seal of the United States Circuit Court of Appeals, Ninth Circuit.]

[Endorsed:] File No. 29,589. Supreme Court U. S., October Term, 1923. Term No. 315. Clarence D. Keller et al., etc., Petitioners, vs. Adams-Campbell Company, Inc., et al. Writ of certiorari and return. Filed Dec. 4, 1923.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 315

CLARENCE D. KELLER AND ARTHUR C. LILLIE, DOING BUSINESS AS HARTFORD WINDSHIELD COMPANY, PETITIONERS,

vs.

ADAMS-CAMPBELL COMPANY, INC.; T. R. GABEL, A. F. KIPPER, INDIVIDUALLY, AND A. F. KIPPER, DOING BUSINESS AS KIPPER & COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BOOK OF EXHIBITS

PETITION FOR CERTIORARI FILED APRIL 25, 1923

CERTIORARI AND RETURN FILED DECEMBER 4, 1923

(29,589)



(29,589)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 315

CLARENCE D. KELLER AND ARTHUR C. LILLIE, DOING BUSINESS AS HARTFORD WINDSHIELD COMPANY, PETITIONERS,

vs.

ADAMS-CAMPBELL COMPANY, INC.; T. R. GABEL, A. F. KIPPER, INDIVIDUALLY, AND A. F. KIPPER, DOING BUSINESS AS KIPPER & COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BOOK OF EXHIBITS

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In the United States Circuit Court of Appeals for the Ninth Circuit.

APPEAL No. 3881.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs-Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC. (a Corporation); T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY; HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Defendants-Appellees.

Designation of Appellants Under Subdivision 8 of Rule 23.

"DESIGNATION OUT" UNDER RULE 23.

NOW COME the appellants, by their solicitors and counsel, under provisions of paragraph 8 of Rule 23, of this court, and request and instruct the Clerk of the above-entitled court to omit from the printed Record on Appeal in the above-entitled cause the following exhibits, which, in the opinion

of plaintiffs and plaintiffs' solicitors are unnecessary for the proper consideration of this cause on appeal in this court:

Plaintiffs' Exhibits.	Description.	Page of Certified Record.
5.	Affidavit of James T. Barkelew	13
6.	Duplication in the record of reissue Patent 14,919 forming part of file-wrapper and contents of said patent (said patent already being included as Plaintiffs' Ex. 1).	23

Defendants' Exhibits.	Description.	Page of Certified Record.
"A"	Requisition Apr. 29, 1919—Clamps and Washers	12
"B"	Requisition May 16, 1919—Clamps and Washers	12
"C"	Requisition May 19, 1919—Clamps and Washers	12
"D"	Requisition May 16, 1919, for 17 Castings.	12
"E"	Requisition May 16, 1919, for 35 sets of Clamps	12
"F"	Requisition May 16, 1919, for 35 sets of Clamps	12
"H"	Envelope No. 252 containing Material Slips	25 & 40
"I"	Envelope No. 276 containing Material Slips	25 & 40
"J"	Envelope No. 298 containing Material Slips	25 & 40
"K"	Envelope No. 336 containing Material Slips	25 & 40

Defendants' Exhibits.	Description.	Page of Certified Record.
"L"	Time Cards—Adams-Campbell Co.	26 & 40
"M"	Time Cards—J. H. Jensen—Apr. 30, 1919	26 & 40
"N"	Time Cards—Wm. Grote—Apr. 28, 1919.	26 & 40
"O"	Time Cards—Wm. Grote—Apr. 29, 1919.	26 & 40
"P"	Time Cards—Wm. Grote—Apr. 25, 1919.	26 & 40
"Q"	Sales Slip Dick Smith—May 30, 1919	27
"R"	Bill—A. T. Bagley Co.—April 9, 1919	27
"S"	Job Record Book Adams-Campbell Co.	40

Dated Aug. 23, 1922.

JAS. E. KELBY,
CHAS. E. TOWNSEND,
Solicitors and Counsel for Appellants.

Service of copy of the within "Designation Out" Under Rule 23 received this 24th day of August, A. D. 1922.

FORD W. HARRIS,
For Defendants-Appellees.

[Endorsed]: Appeal No. 3881. In the United States Circuit Court of Appeals for the Ninth Circuit. Clarence D. Keller and Arthur C. Lillie, Doing Business as Hartford Windshield Company, Plaintiffs-Appellants, vs. Adams-Campbell Company, Inc., et al., Defendants-Appellees. Designation of Appellants Under Subd. 8 of Rule 23. Filed Aug. 25, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

APPEAL No. 3881.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs-Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC. (a Corporation); T. R. GABEL, A. F. KIPPER Individually, and A. F. KIPPER, Doing Business as KIPPER & COMPANY; HARRY W. HAHN, Doing Business as HARRY W. HAHN MANUFACTURING COMPANY; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as KOZY WING AUTO SUPPLY COMPANY,

Defendants-Appellees.

Designation of Appellees Under Subdivision 8 of Rule 23.

"DESIGNATION IN" UNDER RULE 23.

NOW COME the appellees, by their solicitors and counsel, under provisions of Paragraph 8 of Rule 23, of this court, and request and instruct the Clerk of the above-entitled court to include in the record Defendants' Exhibits as follows:

		Condensed Transcript Page No.
"A"	Requisition 4–29–19 for clamps and washers	12
"B"	Requisition 5–16–19 for same material	12
"C"	Requisition 5–19–19 for same material	12
"D"	Requisition 5–16–19 for 17 castings	12
"E"	Requisition 5–16–19 for 35 sets clamps	12
"F"	Requisition 5–16–19 Same material	12
"H"	Envelope No. 252	25 & 40
"I"	Envelope No. 276	25 & 40
"J"	Envelope No. 298	25 & 40
"K"	Envelope No. 336	25 & 40
"L"	Time Cards	26 & 40
"M"	Time Card J. H. Jensen 4–30–19	26 & 40
"N"	Time Card Wm. Grote 4–28–19	26 & 40
"O"	Time Card Wm. Grote 4–29–19	26 & 40
"P"	Time Card Wm. Grote 4–25–19	26 & 40
"Q"	Piece of Paper re order 5–30–19 (D. Smith)	27
"R"	Bill A. T. Bagley & Co. 4–9–19	27
"S"	Job Record Book Adams-Campbell Co.	27 40
"U"	Patent to Vickery No. 132,633	74
"V"	Patent to Weiderer No. 381,452	74
"W"	Patent to Mann No. 751,526	74
"X"	Patent to Olson No. 783,383	74
"Y"	Patent to Jolliffe No. 1,062,402	74
"Z"	Patent to Tischler No. 1,110,973	74

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"Z–2"	Patent to Freeman No. 1,225,608	74
"Z–3"	Patent to Hofbauer No. 1,018,973	74
"Z–4"	Patent to Wensinger No. 1,219,513	74
"Z–5"	Patent to Clark No. 1,093,974....	74
"Z–6"	Patent to Baldwin No. 1,078,765.	74
"Z–7"	French Patent No. 460,778.....	74

Also Plaintiffs' Exhibits as follows:

Exhibit 1.	Keller Reissue Patent No. 14,919..	2
Exhibit 2.	Copy file-wrapper and contents,.... Keller Reissue Patent No. 14,919.	23

The above request is made in response to a "Designation out" filed upon attorneys for appellees on the 24th of August, 1922.

Dated at Los Angeles, California, this 25th day of August, 1922.

FRANK L. A. GRAHAM,
FORD W. HARRIS,
Solicitors and Counsel for Appellees.

[Endorsed]: Original. Appeal No. 3881. In the United States Circuit Court of Appeals for the Ninth Circuit. Clarence D. Keller and Arthur C. Lillie, Doing Business as Hartford Windshield Company, Plaintiffs-Appellants, vs. Adams-Campbell Company, Inc. (a Corporation), etc., et al., Defendants-Appellees. Designation of Appellees Under Subdivision 8 of Rule 23. "Designation in" Under Rule 23. Filed Sep. 2, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Plaintiffs' Exhibit No. 1.

[Endorsed]: No. E–86. Kellar vs. Adams-Campbell Co. Pltffs. Exhibit No. 1. Filed Oct. 4, 1921. Chas. N. Williams, Clerk. Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

C. [illegible] KELLER.

WIND SHIELD.

APPLICATION FILED MAY 22, 1919.

14,919.

Reissued July 20, 1920.

Fig. 2.

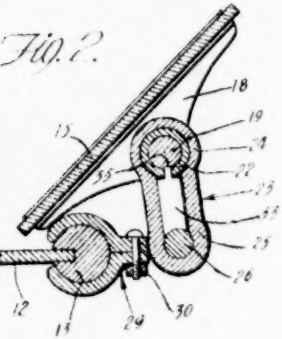


Fig. 5.

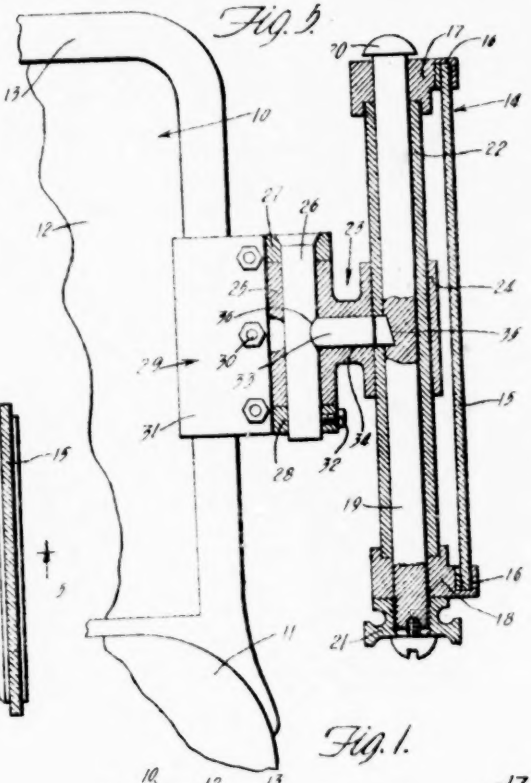


Fig. 3.

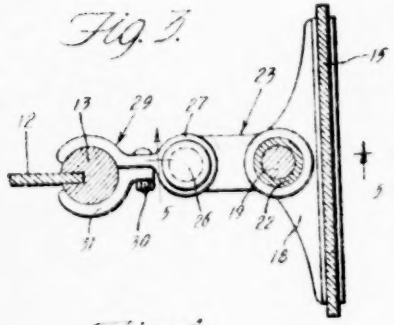


Fig. 4.

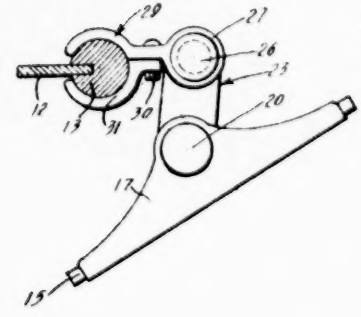
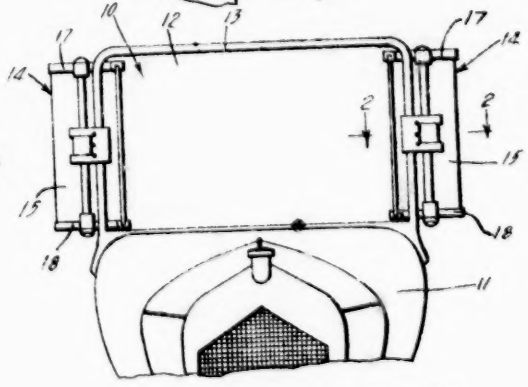


Fig. 1.



Inventor

Clarence D. Keller



UNITED STATES PATENT OFFICE.

CLARENCE D. KELLER, OF LOS ANGELES, CALIFORNIA.

WINDSHIELD.

14,919. Specification of Reissued Letters Patent. Reissued July 20, 1920.

Original No. 1,284,357, dated November 12, 1918, Serial No. 174,770, filed June 14, 1917. Application for reissue filed May 22, 1919. Serial No. 299,030.

To all whom it may concern:

Be it known that I, CLARENCE D. KELLER, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles, State of California, have invented new and useful Improvements in Windshields, of which the following is a specification.

This invention relates to a windshield and particularly pertains to an adjustable windshield for automobiles.

It is common practice to fit automobiles with a transversely extending transparent shield which is secured within a suitable frame and mounted upon the dash of the vehicle body. Due to the narrow width of these shields, the wind draws in around the edges and creates considerable draft within the vehicle. It is the principal object of this invention to provide auxiliary transparent shield members which may be secured in an adjustable manner at the opposite sides of the main windshield and more thoroughly prevent the creation of a draft through the vehicle body.

Another object of this invention is to provide a windshield of the above class which does not require the use of a large mounting frame and may thereby be held in position without obstructing the view.

Another object of this invention is to provide a peculiar pivotal mounting for the shield which will allow it to be universally moved throughout a horizontal plane and in relation to the edge of the main shield.

Another object of this invention is to provide simple operating means for instantly locking the pivotal mounting in any desired position.

It is a further object of this invention to provide a windshield which will be neat in its design, simple in its construction and will act to enhance the appearance of the vehicle upon which it is mounted rather than to depreciate it.

Other objects will appear hereinafter.

The invention is illustrated, by way of example, in the accompanying drawings in which:

Figure 1 is a view in front elevation illustrating the auxiliary shields as mounted at the opposite sides of the main shield; Fig. 2 is a view in horizontal transverse section, as seen on the line 2—2 of Fig. 1, and particularly illustrates the double hinged joint and the position of the auxiliary shield in relation to the main shield when it is desired to entirely prevent the creation of a draft through the vehicle; Fig. 3 is a view similar to Fig. 2 illustrating the windshield as swung outwardly to an obstructing position alongside the main shield; Fig. 4 is a view similar to the two preceding figures, illustrating the auxiliary windshield as swung forwardly of the main shield so that a circulation of air will be effected through the vehicle; Fig. 5 is an enlarged view in transverse section, as seen on the line 5—5 of Fig. 3, illustrating the detail construction of the windshield mounting and its manner of locking.

Referring more particularly to the drawings, 10 indicates a vertical disposed windshield which is mounted transversely of an automobile body 11, as particularly shown in Fig. 1. This shield is formed of a plate glass portion 12 which is bound by a frame 13. The frame 13 is formed with vertical side posts, upon which are secured the auxiliary windshields 14. It will be understood that the detail construction of the windshield 10 is not material and that the present invention relates particularly to auxiliary shield members which are demountably secured to the vertical posts of the windshield frame 13.

The auxiliary shields 14 consist of rectangular plate-glass portions 15 supported at their upper and lower ends within channels 16 of upper and lower supporting brackets 17 and 18. These brackets are particularly shown in Figs. 2, 3 and 4, where it will be seen that the channels 16 extend the entire width of the glass and unite with the main portion of the brackets, which portions are rotatably mounted upon a vertically disposed shaft 19. This shaft is formed with a head 20 which retains it within the brackets and is formed at its other end with threads upon which a locking nut 21 is adapted to be positioned. The brackets 17 and 18 are spaced from each other by means of a sleeve 22 which fits within counter-bores formed in the adjacent faces of the brackets. This sleeve is secured within a knuckle joint bracket 23, as particularly shown in Fig. 5.

The joint bracket 23 is formed with two parallel bearings 24 and 25, one of which

accommodates the sleeve 22 and the other is adapted for the reception of a hinge pin 26. This pin extends through ears 27 and 28 forming a part of a mounting bracket 29. The mounting bracket is adapted to be clamped upon the vertical frame members of the windshield 10 by means of bolts 30 and a clamping plate 31. The pin 26 is secured in its intended position by means of suitable pins or set screws 32. It will thus be seen that the auxiliary shield is provided with universal horizontal movement in relation to the main shield as it swings upon the shaft 19 and the pin 26. The bracket 29 is, to a certain extent as will be seen from Fig. 4; adjustable around the side post 13; and this adjustment adds also to the possibilities of adjustment of the side wing with relation to the main windshield. But, for most purposes of adjustment, the bracket 29 forms merely a mounting bracket to provide a supporting means about which the member 23 may be swung through a very large angle to effect various adjustments of the side wing. The bracket 29 is also adjustable vertically on the side post to adjust the vertical position of the side wing.

One of the important features of this invention is the fact that the auxiliary shield may be locked in any desired angular relation to the windshield by the manipulation of a single locking member. This is accomplished by a lock bolt 33 which extends through a horizontal bore 34 communicating with the vertical bores of the bearings 24 and 25. One end of this bolt is tapered and conforms to a tapered face 35 formed on the side of the shaft 19. The other end of the bolt is rounded to become seated within an arcuate recess 36 formed in the side of the hinge pin 26. It will thus be seen that when the lock nut 21 is tightened upon the shaft 19 it will bear upon the lock shaft of the bracket 18 and act to draw the shaft 19 downwardly. This will wedge the face 35 against the tapered end of the lock bolt 33 and will at the same time wedge the rounded end of the lock bolt against the recess in the hinge pin 26, causing the shaft and pin to be immovable in relation to each other.

In operation, the lock nut 21 may be rotated to relieve the shaft 19. This will permit the windshield to swing upon the shaft 19 and will also allow the shield and bracket 23 to swing around the pin 26. It will be evident that, due to this double pivotal mounting, the windshield may assume any desired angular position in front, at the side, or in the rear of the main shield. After the auxiliary shield has been thus adjusted, tightening of the nut 21, as previously described, will lock it in place.

It will thus be seen that the device here disclosed is formed of few parts which may be readily manufactured, are easily assembled, and may be conveniently operated, as described.

While I have shown the preferred construction of my windshield as now known to me, it will be understood that various changes in the construction, combination, and arrangement of parts may be made by those skilled in the art without departing from the spirit of my invention.

I claim:

1. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, and means whereby the two joints of the shield may be simultaneously locked.

2. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, means whereby the two joints of the shield may be simultaneously locked, and means for detachably securing the shield upon said post.

3. In an auxiliary windshield, a rectangular windshield glass, upper and lower supporting brackets having channels in which the glass is mounted and having alined bearings at one side of the glass, a spacing sleeve having its ends rotatably mounted in the bearings, a shaft extending through the bearings and through the sleeve, a lock-nut upon the shaft for tightening the bearings upon the sleeve, a knuckle-joint bracket having two parallel bearings; said sleeve being mounted in one bearing; there being a horizontal bore through the bracket and connecting the bearings and there being a passage through the sleeve in line with the bore and there being a tapered face upon the shaft in line with the bore, a lock-bolt mounted in the bore and having a tapered end engaging said tapered face, a mounting bracket having ears between which the other sleeve bearing is mounted, and a hinge pin inserted through the ears and bearing and having a recess to receive the other end of the lock bolt; said mounting bracket being adapted for engagement with the side post of a windshield, so that by loosening the lock-nut upon the shaft the parts may be loosened

to move the windshield to a desired position and then by tightening the lock-nut the parts may be held rigid with the main windshield.

4. In an auxiliary windshield, the combination of a shield member, a supporting element for the shield member, and adjustable supporting means for the supporting element embodying a double hinge-joint clamping means engaging and clamping the supporting element and adapted to clamp a stationary member, and a single member for adjusting said clamping means upon the supporting element and a stationary member.

5. In an auxiliary wind shield, the combination of a transparent shield member, supporting means for the shield member comprising a rod extending across the face of the shield member and spaced therefrom, means on the rod engaging and supporting the shield member at spaced poihts of support and adjustable supporting means for the rod engaging the rod at a point within the side and end edges of the shield member.

6. In an auxiliary wind-shield, the combination of a shield member, a supporting element for the shield member embodying a rod and spaced brackets thereon engaging and supporting the shield member at spaced points of support, and a single adjustable supporting means for the rod engaging and supporting the rod between the spaced brackets.

7. In an auxiliary windshield, the combination of a shield member, a supporting element for the shield member, a mounting bracket adapted to be mounted on the side post of a windshield, and adjustable thereon, a supporting means mounted on the bracket to swing horizontally thereon and carrying the supporting element to swing horizontally with reference to the supporting means, and a single adjusting means for rigidly connecting the supporting means to the bracket and the supporting element.

8. In an auxiliary wind shield, the combination of a shield member, a supporting element for the shield member, adjustable supporting means for supporting the supporting element embodying a double hinge-joint clamping means, and means embodied in the clamping means and adjustable at a single point to frictionally hold both of its joints against movement.

9. In an auxiliary wind shield, the combination of an unframed transparent shield member, a supporting element for the shield member embodying a rod spaced from and parallel to the shield member, and spaced means thereon connected to and supporting the shield member at spaced points of support, and adjustable supporting means for the rod engaging the rod at a point between the end edges of the shield member.

10. In an auxiliary windshield the combination of a shield member and supporting means therefor embodying a longitudinal member substantially parallel to the plane of the shield member and spaced from the plane thereof, said longitudinal member terminating between the ends of the shield member, means at each end of said longitudinal supporting member movable relatively to said member and engaging the shield member, and a single supporting means for the longitudinal member engaging said member between its connections to the shield member.

11. In an auxiliary windshield, the combination of an unframed transparent shield member, and a supporting element therefor embodying a longitudinal member substantially parallel to the plane of the shield member and spaced from the plane thereof, and means at each end of said longitudinal supporting member engaging the shield member, swinging supporting means carrying said longitudinal member, and the shield member being swingingly adjustable about the center of the longitudinal member as an axis.

12. In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a longitudinal member substantially parallel to the plane of the shield member, shield engaging and supporting brackets mounted and rotatable on the ends of the longitudinal member, and a single swinging supporting means for the longitudinal member engaging said member at a single point between its connections to the shield member.

13. In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a supporting member and brackets, spacedly mounted thereon and engaging the shield member, said brackets being rotatable on the supporting member, and a single means whereby both brackets may be simultaneously held from rotation on said member or loosened to rotate thereon.

14. In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a hollow rod and brackets rotatively mounted in spaced relation on the rod and engaging and supporting the shield member at spaced points, and a means embodying a clamping rod extending through the hollow supporting rod adapted to clamp the brackets to the supporting rod and hold them against movement thereon.

15. In an auxiliary wind shield, the combination of an unframed transparent shield member, a supporting element for the shield member embodying a rod spaced from and parallel to the shield member, and spaced means on the rod engaging and supporting

the shield member at spaced points of support, and a single adjustable supporting means for the rod engaging the rod at a point between the end edges of the shield member.

16. In an auxiliary windshield, the combination of a shield member, and supporting means therefor embodying a rod substantially parallel to the member, brackets at the end of the rod engaging and supporting the member and rotatable on the rod, a stationary element, and a supporting and clamping device embodying a member engaging the stationary element and engaging and supporting the rod, and means for simultaneously setting and holding the said member against movement on the stationary element and the brackets against movement on the rod.

17. In an auxiliary wind shield, the combination of an unframed transparent shield member, a supporting element for the shield member embodying a longitudinally extending rod spaced from and parallel to the shield member, and spaced means on the rod engaging and supporting the shield member at spaced points of support, and a single adjustable supporting means engaging the rod at a point between the end edges of the shield member.

18. In an auxiliary wind shield, a transparent shield member, and adjustable carrying means for the member embodying a two hinge-joint adjustable supporting member situated entirely between the side and end edges, respectively of the shield member, both pivotal joints thereof being spaced from the face of the shield member.

19. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal member extending across the face of the shield member and a supporting member engaging said longitudinal member at a point intermediate the end edges of the shield, said shield member being adjustable about the center of said longitudinal member as an axis.

20. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom, shield engaging and supporting means on said member, and a supporting member engaging the rod intermediate the side and end edges of the shield, said shield being adjustable about the axis of the rod as a center.

21. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom, shield engaging and supporting means on said member, a supporting member engaging the rod intermediate the side and end edges of the shield, said shield being adjustable about the axis of the rod as a center, and means to lock said shield member in any selected position about the axis of said rod.

22. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom, shield engaging and supporting means on said member, a supporting member engaging the rod intermediate the side and end edges of the shield, said shield being adjustable about the axis of the rod as a center, and means to frictionally clamp said shield member in any selected position about the axis of said rod.

23. In an auxiliary wind shield, the combination of a transparent shield member, and supporting means therefor embodying a longitudinal member secured to the shield, said member extending across the face of the shield and being spaced from the plane thereof, a supporting member engaging the longitudinal member between the ends of the latter, said shield having a pivotal movement about the axis of said longitudinal member as a center, means for pivotally connecting said last mentioned member to the side post of a wind shield and single adjusting means for locking all pivotal joints of said supporting means.

In witness that I claim the foregoing I have hereunto subscribed my name.

CLARENCE D. KELLER.

Plaintiffs' Exhibit No. 6.

2—390.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the Records of this Office of the File Wrapper and Contents, in the matter of the

Reissue Letters Patent of

Clarence D. Keller,

Number 14,919, Granted July 20, 1920,

for

Improvement in Windshields.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed in the District of Columbia this 15th day of April, in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the United States of America the one hundred and forty-fifth.

[Seal] N. E. ROBERTSON,
Commissioner of Patents.

[Stamped]: Old Wrapper With Record of Actions Inside.

1920

Number (Series of 1915),

.....

Div. .....

(Ex'r's Book).....

Reissue No. 14,919

Name—Clarence D. Kelley,
of Los Angeles,
County of .....
State of California.
Invention .....

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Attorney .....

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Associate Attorney .....
(No. of Claims Allowed.....)
Title as Allowed.....
..... (Cl.....)

$30 Rec'd May 22, 1919.
C. U. S. Patent Office.

Los Angeles, California, May 17, 1919.

The Commissioner of Patents,
Washington, D. C.

Sir:

I enclose herewith Re-issue application of Clarence D. Keller, on Windshields, together with original Letters Patent No. 1,284,357, issued November 12, 1918, argument for the issue of said re-issue, and check for $30.00 for the filing of the same.

Please file.

Respectfully,
JAMES T. BARKELEW,
Attorney for Keller.

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Reissue
919

PETITION AND POWER OF ATTORNEY.

To the Commissioner of Patents:

Your Petitioner, Clarence D. Keller, a citizen of the United States, residing at Los Angeles, in the County of Los Angeles, State of California, whose

post-office address is 1256 So. Los Angeles St., prays that he may be allowed to surrender the Letters Patent for an improvement in WINDSHIELDS, granted to him November 12, 1918, being Patent No. 1,284,357, whereof he is now owner, and that Letters Patent may be reissued to him for the same invention upon the annexed specification. With this petition is filed an abstract of title, duly certified, as required in such cases.

And your Petitioner hereby appoints James T. Barkelew, whose registered number is 9007, of 911 Central Building, Los Angeles, California, his attorney, with full power of substitution and revocation to prosecute this application, to make alterations and amendments therein, to receive the patent and to transact all business in the Patent Office connected therewith.

CLARENCE D. KELLER.

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TO ALL WHOM IT MAY CONCERN:

Be it known that I, CLARENCE D. KELLER, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles, State of California, have invented new and useful Improvements in Windshields, of which the following is a specification.

This invention relates to a windshield and particularly pertains to an adjustable windshield for automobiles.

It is a common practice to fit automobiles with a transversely extending transparent shield which is secured within a suitable frame and mounted upon the dash of the vehicle body. Due to the narrow width of these shields, the wind draws in around the edges and creates considerable draft within the vehicle. It is the principal object of this invention to provide auxiliary transparent shield members which may be secured in an adjustable manner at the opposite side of the main windshield and more thoroughly prevent the creation of a draft through the vehicle body.

Another object of this invention is to provide a windshield of the above class which does not require the use of a large mounting frame and may thereby be held in position without obstructing the view.

Another object of this invention is to provide a peculiar pivotal mounting for the shield which will allow it to be universally moved throughout a horizontal plane and in relation to the edge of the main shield.

Another object of this invention is to provide simple operating means for instantly locking the pivotal mounting in any desired position.

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It is a further object of this invention to provide a windshield which will be neat in its design, simple in its construction and will act to enhance the ap-

pearance of the vehicle upon which it is mounted rather than to depreciate it.

Other objects will appear hereinafter.

The invention is illustrated, by way of example, in the accompanying drawings in which:

Figure 1 is a view in front elevation illustrating the auxiliary shields as mounted at the opposite sides of the main shield; Fig. 2 is a view in horizontal transverse section, as seen in the line 2–2 of Fig 1, and particularly illustrates the double hinged joint and the position of the auxiliary shield in relation to the main shield when it is desired to entirely prevent the creation of a draft through the vehicle; Fig. 3 is a view similar to Fig. 2 illustrating the windshield as swung outwardly to an obstructing position alongside the main shield; Fig 4 is a view similar to the two preceding figures illustrating the auxiliary windshield as swung forwardly of the main shield so that a circulation of air will be effected through the vehicle; Fig. 5 is an enlarged view in transverse section, as seen on the line 5–5 of Fig. 3, illustrating the detail construction of the windshield mounting and its manner of locking.

Referring more particularly to the drawings, 10 indicates a vertical disposed windshield which is mounted transversely of an automobile body 11, as particularly shown in Fig. 1. This shield is formed of a plate glass portion 12 which is bound by a frame 13. The frame 13 is formed with vertical side posts, upon which are secured the

auxiliary windshields 14. It will be understood that the detail construction of the windshield 10 is not material and that the present invention re-

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lates particularly to auxiliary shield members which are demountably secured to the vertical posts of the windshield frame 13.

The auxiliary shields 14 consist of rectangular plate-glass portions 15 supported at their upper and lower ends within channels 16 of upper and lower supporting brackets 17 and 18. These brackets are particularly shown in Figs 2, 3 and 4, where it will be seen that the channels 16 extend the entire width of the glass and unite with the main portion of the brackets, which portions are rotatably mounted upon a vertically disposed shaft 19. This shaft is formed with a head 20 which retains it within the brackets and is formed at its other end with threads upon which a locking nut 21 is adapted to be positioned. The brackets 17 and 18 are spaced from each other by means of a sleeve 22 which fits within counter-bores formed in the adjacent faces of the brackets. This sleeve is secured within a knuckle joint bracket 23, as particularly shown in Fig. 5.

The joint bracket 25 is formed with two parallel bearings 24 and 25, one of which accommodates the sleeve 22 and the other is adapted for the reception of a hinge pin 26. This pin extends through ears 27 and 28 forming a part of a mounting bracket

29. The mounting bracket is adapted to be clamped upon the vertical frame members of the windshield 10 by means of bolts 30 and a clamping plate 31. The pin 26 is secured in its intended position by means of suitable pins or set screws 32. It will thus be seen that the auxiliary shield is provided with universal horizontal movement in relation to the main shield as it swings upon the shaft 19 and the pin 26. The bracket 29 is, to a certain extent as will be seen from Fig. 4; adjustable around the side

post 13, and this adjustment adds also to the possibilities of adjustment of the side wing with relation to the main windshield. But for most purposes of adjustment, the bracket 29 forms merely a mounting bracket to provide a supporting means about which the member 23 may be swung through a very large angle to effect various adjustments of the side wing. The bracket 29 is also adjustable vertically on the side post to adjust the vertical position of the side wing.

One of the important features of this invention is the fact that the auxiliary shield may be locked in any desired angular relation to the windshield by the manipulation of a single locking member. This is accomplished by a lock bolt 33 which extends through the horizontal bore 34 communicating with the vertical bores of the bearings 24 and 25. One end of this bolt is tapered and conforms

to a tapered face 35 formed on the side of the shaft 19. The other end of the bolt is rounded to become seated within an arcuate recess 36 formed in the side of the hinge pin 26. It will thus be seen that when the lock nut 21 is tightened upon the shaft 19 will bear upon the lock shaft of the bracket 18 and act to draw the shaft 19 downwardly. This will wedge the face 35 against the tapered end of the lock bolt 33 and will at the same time wedge the rounded end of the lock bolt against the recess in the hinge pin 26, causing the shaft and pin to be immovable in relation to each other.

In operation the lock nut 21 may be rotated to relieve the shaft 19. This will permit the windshield to swing upon the shaft 19 and will also allow the shield and bracket 23 to swing around the pin 26. It will be evident that, due to this double pivotal mounting, the windshield may assume any desired angular position in front, at the side, or in the rear of the main shield. After the auxiliary

shield has been thus adjusted, tightening of the nut 21, as previously described, will lock it in place.

It will thus be seen that the device here disclosed is formed of few parts which may be readily manufactured, are easily assembled, and may be conveniently operated, as described.

While I have shown the preferred construction of my windshield as now known to me, it will be

understood that various changes in the construction, combination, and arrangement of parts may be made by those skilled in the art without departing from the spirit of my invention.

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I claim:

1. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, and means whereby the two joints of the shield may be simultaneously locked.

2. In a auxiliary windshield, the combination with an vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, means whereby the two joints of the shield may be simultaneously locked, and means for detachably securing the shield upon said post.

3. In an auxiliary windshield, a rectangular windshield glass, upper and lower supporting brackets having channels in which the glass is mounted and having alined bearings at one side of the glass, a spacing sleeve having its ends rotatably mounted in the bearings, a shaft extending through the bearings and through the sleeve, a lock-nut upon the shaft for tightening the bearings upon the sleeve, and a knuckle-joint bracket having two parallel bearings; said sleeve being mounted in one bearing; there being a horizontal bore through the bracket and connecting the bearings and there being a passage through the sleeve in line with the bore and there being a tapered face upon the shaft in line with the bore, a lock-bolt mounted in the bore and having a tapered end engaging said tapered face, a mounting bracket having ears between

which the other sleeve bearing is mounted, and a hinge pin inserted through the ears and bearing and having a recess to receive the other end of the lock bolt; said mounting bracket being adapted for engagement with the side post of a windshield, so that by loosening the lock-nut upon the shaft the parts may be loosened to move the windshield to a desired position and then by tightening the lock-nut the parts may be held rigid with the main windshield.

4. In an auxiliary windshield, the combination of a shield member, a supporting element for the shield member, and adjustable supporting means for the supporting element embodying a double hinge-joint clamping means engaging and clamping the supporting element.

5. In an auxiliary windshield, the combination of a shield member, a supporting element for the shield member embodying a rod and brackets thereon engaging the shield member, and adjustable supporting means for the supporting element embodying a double hinge-joint clamping means engaging and supporting the rod.

6. In an auxiliary windshield, the combination of a shield member, a supporting element for the shield member embodying a rod and spaced brackets thereon engaging and supporting the shield member at spaced points of support, and a single adjustable supporting means for the rod engaging and supporting the rod between the spaced brackets.

7. In an auxiliary windshield, the combination of a shield member, a supporting element for the shield member, a mounting bracket adapted to be mounted on the side post of a windshield, and adjustable thereon, and a supporting means mounted on the bracket to swing horizontally thereon and carrying the supporting element to swing horizontally with reference to the supporting means, so that the shield member is supported by means

6. In an auxiliary windshield, the combination of a shield member, a supporting element for the shield member, adjustable supporting means for supporting the shield supporting element embodying a double hinge-joint clamping means, and means embodied in the clamping means to frictionally hold its joints against movement.

9. In an auxiliary windshield, the combination of a shield member, and adjustable supporting means therefor embodying a double hinge-joint clamping means having a clamping member located thereing.

10. In an auxiliary windshield, the combination of a shield member, and a supporting means therefor embodying a longitudinal member substantially parallel to the plane of the shield member and spaced from the plane thereof.

11. In an auxiliary windshield, the combination of a shield member, and a supporting means therefor embodying a longitudinal rod extending across the face of the shield member.

12. In an auxiliary windshield, the combination of a shield member, and a supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom, and shield engaging and supporting means at the ends of said member.

13. In an auxiliary windshield, the combination of a shield member, and a supporting means therefor embodying a longitudinal member substantially parallel to the plane of the shield member and spaced from the plane thereof, and means at each end of said longitudinal member and supporting engaging the shield member.

14. In an auxiliary windshield, the combination of a shield member, and adjustable supporting means therefor having two hinge points of adjustment, both of which hinge points are spaced from the plane of the shield member.

per D

11 ~~(14-15)~~. In an auxiliary windshield, the combination of a shield member, and a supporting element therefor embodying a longitudinal member substantially parallel to the plane of the shield member and spaced from the plane thereof, and means at each end of said longitudinal member ~~supporting~~ engaging the shield member, swinging supporting means carrying said longitudinal member, and the shield member being swingingly adjustable about the center of the longitudinal member as an axis.

~~16. In an auxiliary windshield, a shield member, and adjustable carrying means for the member embodying a pivotally adjustable supporting member situated between the side and end edges, respectively, of the shield member.~~

~~17. In an auxiliary windshield, a shield member, and adjustable carrying means for the member embodying a two hinge-joint adjustable supporting member situated between the side and end edges, respectively, of the shield member, and both pivotal joints thereof being spaced from the face of the shield member.~~

per a

12 ~~(15-16)~~. In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a longitudinal member substantially parallel to the plane of the shield member, shield engaging and supporting brackets mounted and rotatable on the ends of the longitudinal member, and swinging supporting means for the longitudinal member.

per a Insert 62

13 ~~(16-17)~~ In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a supporting member and brackets, spacedly mounted thereon and engaging the shield member, said brackets being rotatable on the supporting member, and a single means whereby both brackets may be simultaneously held from rotation on said member or loosened to rotate thereon.

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20. In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a hollow rod and brackets rotatively mounted in spaced relation on the rod and engaging and supporting the shield member at spaced points, and a means embodying a clamping rod extending through the hollow supporting rod adapted to clamp the brackets to the supporting rod and hold them against movement thereon.

21. In an auxiliary windshield, the combination of a shield member, and supporting means therefor embodying a double hinge-joint device, and means whereby the two joints of this device may be simultaneously set and be held against movement.

22. In an auxiliary windshield, the combination of a shield member, and supporting means therefor embodying a rod substantially parallel to the member, brackets at the end of the rod engaging and supporting the member and rotatable on the rod, a stationary element, and a supporting and clamping device embodying a member engaging the stationary element and engaging and supporting the rod, and means for simultaneously setting and holding the said member against movement on the stationary element and the brackets against movement on the rod.

In witness whereof I claim the foregoing I have hereunto subscribed my name.

Clarence W. Keller

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OATH.

State of California,
County of Los Angeles,—ss.

Clarence D. Keller, the above named Petitioner, being duly sworn, deposes and says that he is a citizen of the United States, and a resident of the City of Los Angeles, in the County of Los Angeles, State of California, that he verily believes himself to be the original, first and sole inventor of the improvements in WINDSHIELDS, set forth in the foregoing specification and for which improvement he solicits a patent; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof or more than two years prior to the filing of his application, hereinafter stated, which resulted in the Letters Patent for which this application is an application for re-issue, or in public use or on sale in the United States for more than two years prior to his said prior application; that said invention has not been patented in any country foreign to the United States, or an application filed by him or his legal representative or assigns more than twelve months prior to his application, and that no application for patent on said invention has been filed prior to the filing of his said application

by him or his legal representative or assigns in any country foreign to the United States; all excepting in the United States Letters Patent No. 1,284,357, issued November 12, 1918, and the application therefor filed June 14, 1917, Serial No. 174,770, for which patent this present application is an application for re-issue:

That deponent verily believes that the Letters Patent referred to in the foregoing Petition and specification and herewith surrendered are invalid and inoperative for the reason that the specification thereof is insufficient and incomplete, and that such insufficiency and incompleteness consists of insufficiency and incompleteness of the description and claims of said patent; and deponent further says that the errors which render such patent so invalid and inoperative arose from inadvertence, and without any fraudulent and deceptive intention on the part of deponent; and that the following is a true specification of the errors which it is claimed constitute such inadvertence relied upon:

That the claims of said patent are insufficient and incomplete and do not properly or fully protect or secure to applicant his full invention as it appears over the prior art, but are unduly limited and are not directed to some of the real and important features of his invention:

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And that such errors arose through a misunderstanding between applicant and his attorney; that applicant had fully described to his attorney the several features of his invention now claimed in this present application, and was informed by his attorney that the claims as allowed covered the general and broad feature of supporting the shield by a rod and a double hinged supporting member and that applicant relied on such statement as he understood it at that time; whereas it now appears to applicant that such statement was a mistake or that he misunderstood his attorney.

CLARENCE D. KELLER.

Subscribed and sworn to before me this 16th day of May, 1919.

[Seal] VIRGINIA I. BERINGER,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Jan. 29, 1922.

Approved June 10, 1919, Under Order 2255.

T. A. HOSTETLER,

Law Examiner.

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No. 1284357

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

WHEREAS Clarence D. Keller, of Los Angeles, California, has presented to the Commissioner of Patents a petition praying for the grant of Letters

Patent for an alleged new and useful improvement in Wind-shields, he having assigned one-half of his right, title, and interest in said improvement to Rupert W. Haserot, of Los Angeles, California, a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of Law in such cases made and provided, and

WHEREAS upon due examination made the said Claimant is adjudged to be justly entitled to a patent under the Law.

Now therefore these Letters Patent are to grant unto the said Clarence D. Keller and Rupert W. Haserot, their heirs or assigns for the term of Seventeen years from the twelfth day of November, one thousand nine hundred and eighteen, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed in the District of Columbia this twelfth day of November, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

[Seal] R. F. WHITEHEAD,
Acting Commissioner of Patents.

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And that such errors arose through a misunderstanding between applicant and his attorney; that applicant had fully described to his attorney the several features of his invention now claimed in this present application, and was informed by his attorney that the claims as allowed covered the general and broad feature of supporting the shield by a rod and a double hinged supporting member and that applicant relied on such statement as he understood it at that time; whereas it now appears to applicant that such statement was a mistake or that he misunderstood his attorney.

CLARENCE D. KELLER.

Subscribed and sworn to before me this 16th day of May, 1919.

[Seal] VIRGINIA I. BERINGER,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Jan. 29, 1922.

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T. A. HOSTETLER,
Law Examiner.

299030
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357

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Patent for an alleged new and useful improvement in Wind-shields, he having assigned one-half of his right, title, and interest in said improvement to Rupert W. Haserot, of Los Angeles, California, a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of Law in such cases made and provided, and

WHEREAS upon due examination made the said Claimant is adjudged to be justly entitled to a patent under the Law.

Now therefore these Letters Patent are to grant unto the said Clarence D. Keller and Rupert W. Haserot, their heirs or assigns for the term of Seventeen years from the twelfth day of November, one thousand nine hundred and eighteen, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed in the District of Columbia this twelfth day of November, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

[Seal] R. F. WHITEHEAD,
Acting Commissioner of Patents.

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UNITED STATES PATENT OFFICE.

CLARENCE D. KELLER, OF LOS ANGELES, CALIFORNIA, ASSIGNOR OF ONE-HALF TO RUPERT W. HASEROT, OF LOS ANGELES, CALIFORNIA.

WIND-SHIELD.

1,284,357. Specification of Letters Patent. Patented Nov. 12, 1918.

Application filed June 14, 1917. Serial No. 174,770.

To all whom it may concern:

Be it known that I, CLARENCE D. KELLER, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles and State of California, have invented new and useful Improvements in Wind-Shields, of which the following is a specification.

This invention relates to a windshield and particularly pertains to an adjustable windshield for automobiles.

It is common practice to fit automobiles with a transversely extending transparent shield which is secured within a suitable frame and mounted upon the dash of the vehicle body. Due to the narrow width of these shields, the wind draws in around the edges and creates considerable draft within the vehicle. It is the principal object of this invention to provide auxiliary transparent shield members which may be secured in an adjustable manner at the opposite sides of the main windshield and more thoroughly prevent the creation of a draft through the vehicle body.

Another object of this invention is to provide a windshield of the above class which does not require the use of a large mounting frame and may thereby be held in position without obstructing the view.

Another object of this invention is to provide a peculiar pivotal mounting for the shield which will allow it to be universally moved throughout a horizontal plane and in relation to the edge of the main shield.

Another object of this invention is to provide simple operating means for instantly locking the pivotal mounting in any desired position.

It is a further object of this invention to provide a windshield which will be neat in its design, simple in its construction and will act to enhance the appearance of the vehicle upon which it is mounted rather than to depreciate it.

Other objects will appear hereinafter.

The invention is illustrated, by way of example, in the accompanying drawings in which:

Figure 1 is a view in front elevation illustrating the auxiliary shields as mounted at the opposite sides of the main shield.

Fig. 2 is a view in horizontal transverse section, as seen on the line 2—2 of Fig. 1, and particularly illustrates the double hinged joint and the position of the auxiliary shield in relation to the main shield when it is desired to entirely prevent the creation of a draft through the vehicle.

Fig. 3 is a view similar to Fig. 2 illustrating the wind-shield as swung outwardly to an obstructing position alongside the main shield.

Fig. 4 is a view similar to the two preceding figures, illustrating the auxiliary windshield as swung forwardly of the main shield so that a circulation of air will be effected through the vehicle.

Fig. 5 is an enlarged view in transverse section, as seen on the line 5—5 of Fig. 3, illustrating the detail construction of the windshield mounting and its manner of locking.

Referring more particularly to the drawings, 10 indicates a vertically disposed windshield which is mounted transversely of an automobile body 11, as particularly shown in Fig. 1. This shield is formed of a plate-glass portion 12 which is bound by a frame 13. The frame 13 is formed with vertical side posts, upon which are secured the auxiliary windshields 14. It will be understood that the detail construction of the windshield 10 is not material and that the present invention relates particularly to auxiliary shield members which are demountably secured to the vertical posts of the windshield frame 13.

The auxiliary shields 14 consist of rectangular plate-glass portions 15 supported at their upper and lower ends within channels 16 of upper and lower supporting brackets 17 and 18. These brackets are particularly shown in Figs. 2, 3 and 4, where it will be seen that the channels 16 extend the entire width of the glass and unite with the main portion of the brackets, which portions are rotatably mounted upon a vertically disposed shaft 19. This shaft is formed with a head 20 which retains it within the brackets and is formed at its other end with threads upon which a locking nut 21 is adapted to be positioned. The brackets 17 and 18 are spaced from each other by means of a sleeve 22 which fits within counterbores formed in the adjacent faces of the brackets. This sleeve is secured within a knuckle joint bracket 23, as particularly shown in Fig. 5.

The joint bracket 23 is formed with two parallel bearings 24 and 25, one of which

accommodates the sleeve 22 and the other is adapted for the reception of a hinge pin 26. This pin extends through ears 27 and 28 forming a part of a mounting bracket 29. The mounting bracket is adapted to be clamped upon the vertical frame members of the windshield 10 by means of bolts 30 and a clamping plate 31. The pin 26 is secured in its intended position by means of suitable pins or set screws 32. It will thus be seen that the auxiliary shield is provided with universal horizontal movement in relation to the main shield as it swings upon the shaft 19 and the pin 26.

One of the important features of this invention is the fact that the auxiliary shield may be locked in any desired angular relation to the windshield by the manipulation of a single locking member. This is accomplished by a lock bolt 33 which extends through a horizontal bore 34 communicating with the vertical bores of the bearings 24 and 25. One end of this bolt is tapered and conforms to a tapered face 35 formed on the side of the shaft 19. The other end of the bolt is rounded to become seated within an arcuate recess 36 formed in the side of the hinge pin 26. It will thus be seen that when the lock nut 21 is tightened upon the shaft 19 it will bear upon the lock shaft of the bracket 18 and act to draw the shaft 19 downwardly. This will wedge the face 35 against the tapered end of the lock bolt 33 and will at the same time wedge the rounded end of the lock bolt against the recess in the hinge pin 26, causing the shaft and pin to be immovable in relation to each other.

In operation, the lock nut 21 may be rotated to relieve the shaft 19. This will permit the windshield to swing upon the shaft 19 and will also allow the shield and bracket 23 to swing around the pin 26. It will be evident that, due to this double pivotal mounting, the windshield may assume any desired angular position in front, at the side, or in the rear of the main shield. After the auxiliary shield has been thus adjusted, tightening of the nut 21, as previously described, will lock it in place.

It will thus be seen that the device here disclosed is formed of few parts which may be readily manufactured, are easily assembled, and may be conveniently operated, as described.

While I have shown the preferred construction of my windshield as now known to me, it will be understood that various changes in the construction, combination, and arrangement of parts may be made by those skilled in the art without departing from the spirit of my invention.

I claim:

1. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, and means whereby the two joints of the shield may be simultaneously locked.

2. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, means whereby the two joints of the shield may be simultaneously locked, and means for detachably securing the shield upon said post.

3. In an auxiliary windshield, a rectangular windshield glass, upper and lower supporting brackets having channels in which the glass is mounted and having alined bearings at one side of the glass, a spacing sleeve having its ends rotatably mounted in the bearings, a shaft extending through the bearings and through the sleeve, a lock-nut upon the shaft for tightening the bearings upon the sleeve, a knuckle-joint bracket having two parallel bearings; said sleeve being mounted in one bearing; there being a horizontal bore through the bracket and connecting the bearings and there being a passage through the sleeve in line with the bore and there being a tapered face upon the shaft in line with the bore; a lock-bolt mounted in the bore and having a tapered end engaging said tapered face, a mounting bracket having ears between which the other sleeve bearing is mounted, and a hinge pin inserted through the ears and bearing and having a recess to receive the other end of the lock-bolt; said mounting bracket being adapted for engagement with the side post of a windshield; so that by loosening the lock-nut upon the shaft the parts may be loosened to move the windshield to a desired position and then by tightening the lock-nut the parts may be held rigid with the main windshield.

In testimony whereof I have signed my name to this specification.

CLARENCE D. KELLER.

C D KELLER.

WIND SHIELD.

APPLICATION FILED JUNE 14, 1917.

1,284,357.

Patented Nov. 12, 1918.

Fig. 2.

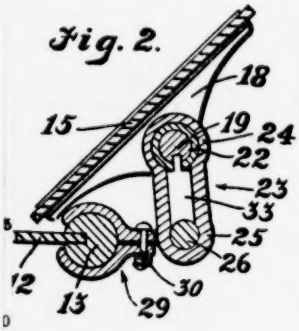


Fig. 5.

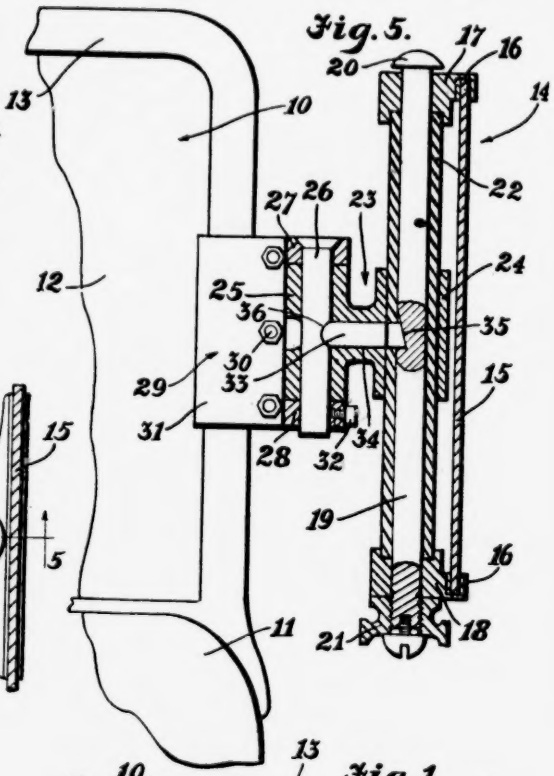


Fig. 3.

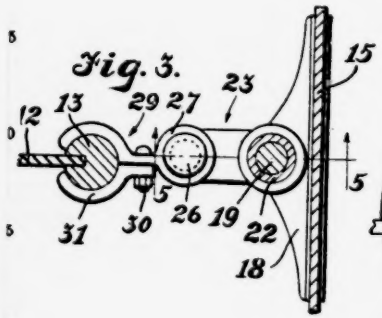


Fig. 4.

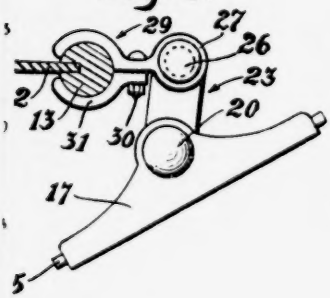
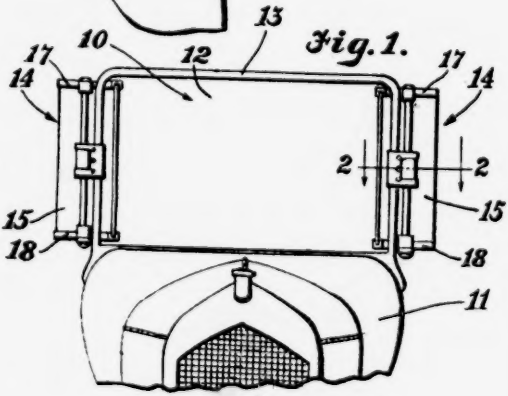


Fig. 1.



INVENTOR

CLARENCE D. KELLER.

By Hazard & Miller

ATTORNEYS.

2—404.

ASSIGNMENT.

On March 1, 1919, Clarence D. Keller appointed John W. White, of Los Angeles, Calif., his attorney to license others under patent 1284357, and stated that he had that day assigned to said White a 1/3 interest in said patent, but that said assignment was not as yet recorded in the U. S. Patent Office.

Recorded April 24, 1919, in Liber J–107, Page 45.

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2—404.

ASSIGNMENT.

On Nov. 10, 1919, J. W. White assigned to Clarence D. Keller his 1/3 interest in patent No. 1284357.

Recorded Nov. 18, 1919, in Liber P–108, Page 461.

Examined up to and including April 10, 1920.

This certificate dated June 29, 1920.

WILLIS B. MAGRUDER,
Chief of Div. D.

No further assignments appear to have been received for record including June 24, 1920.

299030

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Barkelew, J. T.
78347.

2—403.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C.

June 4, 1919.

Application of Clarence D. Keller, Los Angeles, Cal., assignor of one-half to Rupert W. Haserot, Los Angeles, Cal., for Reissue of Letters Patent, No. 1,284,357, dated November 12, 1918, for improvement in "Wind-shield."

I certify that the annexed is a true copy from the Digest of Assignments in this Division of all assignments of undivided interest found of record under or relating to the aforesaid Letters Patent up to and including April 15, 1919.

WILLIS B. MAGRUDER,
Chief of Assignment Division.

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Clarence D. Keller.

Instrument dated June 20, 1917. Recorded Nov. 13, 1917. Liber A. 103, p. 428.

Parties.	Invention.
Clarence D. Keller,	Windshields.
to	Appln. filed June 14, 1917.
Rupert W. Haserot,	Ser. No. 174,770.
Los Angeles, Cal.	Pat. 1,284,357. Nov. 12, 1918.

Keller assigns an undivided one-half of the whole right, title and interest in said invention as described in said application. Letters patent to issue to himself and assignees. Consideration $1.

Instrument Acknowledged Jan. 11, 1919. Recorded Jan. 16, 1919. Liber V. 106, p. 49.

Parties.	Invention.
Rupert W. Haserot,	Wind-shield.
to	Nov. 12, 1918. 1,284,357.
Clarence D. Keller,	
Los Angeles, Cal.	

Haserot, stating that he owns an undivided one-half of the whole right and title to said United States letters patent by assignment recorded in the Patent Office, assigns his undivided one-half interest in said patent. $10 and other consideration.

[Stamped:] Mail Room, U. S. Patent Office. Jun. 9, 1919.

299,030
Div. 10

Re application Serial No. 299030—Reissue of No. 1,284,357.
Clarence D. Keller.
Filed May 22, 1919.
On Windshields.

Los Angeles, California, June 4, 1919.

The Commissioner of Patents,
Washington, D. C.

Sir:

I am returning Statement to Accompanying application for Reissue of Patent No. 1,284,357, as above identified. This was returned evidently for signature of attorney. Please file.

Respectfully,
JAMES T. BARKELEW,
Attorney for Keller.

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Stamp Cancelled
and
Paper Returned.

STATEMENT TO ACCOMPANY APPLICATION FOR REISSUE of Patent No. 1,284,357. Clarence D. Keller, dated November 12, 1918.

Commissioner of Patents,
Washington, D. C.

Sir:

It is thought that a review of the features of applicant's invention and a comparison with the prior state of the art will facilitate consideration of this application for re-issue. Examiner's attention is therefore respectfully directed to the following:

The state of the art at the time of applicant's invention, or at the time of filing of his original application on June 14, 1917, is well illustrated by the references cited in that original application, so far as applicant is aware, and he has been in touch with improvements made along the general lines of windshields and the like, there has been proposed or used no windshield construction which approached his invention any closer than the devices shown in the references of record.

The device of the British patent No. 25,621 of 1910 to Nicolson is typical of the kind of windshield ordinarily known as the tonneau windshield. Although the art of tonneau windshield has developed constructions of great effectiveness and

utility; yet the only general, or even specific, resemblance between the tonneau windshield and applicant's auxiliary windshield, or side wing (as it is known commercially), lies merely in the fact that these tonneau windshields have a side shield or wing pivotally connected to the main central shield. Now, so far as applicant is aware, and certainly so far as the reference goes to show, these side shields have always been attached or connected to the main central shield by a single hinge—by a pivot which allows a swinging action only a single axis. Various frames and framing devices for 299030

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the glass of these side shields have been adopted from time to time; but, generally speaking, they have been frames at the edges of the glass, and these frames are usually directly pivoted to the main central frame.

Thus the framing arrangement and the methods of pivotal mounting in these prior devices are both quite entirely different from applicant's method of framing and adjustably supporting the glass side wings and from his method of pivotal mounting.

With regard to the particular subject matter pointed out by the Examiner, in connection with this Nicolson reference, in Examiner's letter of Oct. 25, 1917, it is to be noted that Nicolson's hood or vehicle top construction is a thing which is quite entirely in another art from applicant's auxiliary windshield. Although a vehicle top is of course to a certain extent a windshield or wind deflector, yet

the art of vehicle tops is quite entirely distinct from the art of windshields, properly so-called. It is not quite seen how any mechanic, or anyone skilled in the art, from seeing the Nicolson construction, would conceive and perfect applicant's side wings. In view of what is hereinafter stated, it is believed that it will be readily recognized, that applicant, at the time of making his invention, made an invention which was broadly and more or less fundamentally new; an invention which opened up a new art; an invention which, in its way, was a pioneer in the art of side wings or auxiliary windshields for the front windshield of automobile vehicles. This has certainly been demonstrated to be true so far as commercial use of such side wings have been concerned. In the commercial field, applicant was

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most evidently the leader and the first to introduce such side wings to the market. In fact, so far as applicant is aware, he was the first to make a successful side wing for automobile windshields.

These being the facts of the case, and it being shown hereinafter that the other references do not at all negative this pioneering position taken by applicant, it would naturally seem that applicant was entitled to broad claims covering his invention. It is the purpose of this re-issue to obtain, as far as possible, re-issuance on the broad claims to which applicant is evidently entitled; and it is believed that the breadth of the claims now obtainable, within the general scope of applicant's invention, as here-

inafter pointed out, is only limited by the fact that the certain claims were presented and cancelled in the original application. With all due deference to Examiner's citations, the present attorney is frankly of opinion that certain of the claims in the original case should not have been cancelled entirely. The relation of these cancelled claims to the claims now presented will be apparent, it is thought, from the following discussion and from consideration of the claims themselves. Generally speaking, none of the particular features hereinafter pointed out were claimed at all in the original case. In fact, the claims made and cancelled, were in general directed to the double joint connection, as a supporting means, in combination with the vertical post (the main windshield post) and glass engaging brackets (original claim 4) or in combination with a mounting bracket and the glass engaging brackets and (broadly) means for locking the joints (claim 299030

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4 of amendment dated Nov. 26, 1917); or were directed to broadly the combination of a vertical supporting post and means for disposing the shield at any angle relative to the post (original claim 1); or to the same plus (broadly) locking means (original claim 2); or to the same plus the "locking nut" to lock the shield in relation to the post (original claim 3). There is nothing in these cancelled claims that either asked for protection broadly on double

jointed supporting means without the encumbrance of other limitations, or for the combination of double jointed supporting means in combination with applicants peculiar glass supporting element (hereinafter referred to), or for any of the other peculiar features hereinafter set out.

The British reference Holland shows a construction which, in some respects may be said to be similar to applicant's construction; but it is believed that when specific and direct comparison is made between the two devices, it is then readily seen that there is a very substantial difference between them. This difference relates not only to specific construction, but relates also more broadly and generally to the purposes to which the devices are put. Of course it cannot be denied that the Holland construction is a windshield intended specifically to deflect wind; but even a superficial reading of the Holland specification points to the fact that Holland's device is designed particularly to deflect wind away from an opening. Applicant's device is made for the specific purpose of attachment to the side of a windshield to form a certain kind of continuation or extension of that windshield; to aid that windshield in deflecting wind from the space behind it. Holland's device is made, adapted and intended to be placed at the side of an opening to deflect wind away from that clear opening.

In the form shown in Fig. 1 Holland explains that he may use two arms G, one at each side of the shield D, the arms G being pivoted or hinged at both ends—at one end to a stationary part and at the other end to the shield D. It is to be noted however, that the shield D is in this case placed horizontallyy and not vertically, and that the arms G are placed in vertical planes rather than in horizontal planes. In Fig. 5 Holland shows the shield D placed in vertical planes at the sides of the opening. But he does not say, in his specification, any place, that the pivoted or hinged arms G, are used for supporting shields D. There is no statement found in the specification stating that "these arms—are employed—in Fig. 5, as stated by Examiner in his letter of October 25, 1917. There seems to be nothing whatever in the specification that shows any intention on the part of Holland to mount the side shields D on a double hinged support.

These general remarks, drawing attention to the general differences between Nicolson and Holland, are now made for the purpose of showing how applicant and his present attorney view applicant's invention. To a certain extent, these remarks may posibly not now specifically enter into the situation, due to the previous presentation and cancellation of certain claims; but they do go to show that, outside of the limitations now imposed upon applicant by such claim cancellations, applicant should be allowed claims which broadly cover his invention.

The reference Freeman, No. 1,225,608; does not seem to show anything which would conflict with ap-

plicant's invention, either in purpose or in general
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or specific structure. It would seem certain that this reference cannot anticipate any of the claims which are now presented in this re-issue application, so further discussion of the reference is deemed unnecessary.

Now there are several features and aspects of applicant's invention which seem to be undoubtedly patentable over the prior art and which were not claimed in any manner whatsoever in the original application. These features relate generally to the method of framing the shield member (the direct supporting element by which the shield is supported) and the method of adjustably supporting the shield member to make it adjustable to the various positions desired.

Applicant employs double hinged joint clamp means; or a double hinge-joint supporting member or element embodying a frictional clamping or holding means with itself. This is a feature not shown at all in the references. To make the double hinged joint supporting means at the same time a clamping means, or more specifically, a frictional clamping means, clearly specifically differentiates over each and all the references. Although in Holland it is said in lines 4 and 5 of page 4, that any suitable locking devices may be employed for locking the various elements in place when they are set or adjusted. There is nothing whatever in this language to point out that frictional locking means are used,

or that the locking means is in conjunction with or embodied in the supporting elements or members. In fact, it is only a general statement that any suitable kind of locking means may be used. There are almost enumerable kinds of locking means that might be used; and so the reference fails entirely to anticipate applicant's specific arrangement of locking means which is preferably frictional and which
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is embodied in the two-jointed supporting means. This is expressed in several ways in the claims, but is perhaps most broadly expressed by the statement that applicant uses a two-joint clamping means as a means to adjustably support the shield member.

Another feature of broad differentiation over the art is the act that both pivots of the double jointed supporting means are removed or spaced from the plane of the shield member. The Holland reference shows a supporting means with one of the pivotal points in the plane of the shield member. (Or at least presumably there, as Holland does not explain any other disposition of the pivot). This specific disposition of the pivot with reference to the shield member enables applicant to manipulate his shield member and put it into position which it could not otherwise be put into. It is thought that this will be apparent from inspection of the drawings. Furthermore, this disposition of the pivotal points enables applicant to use a construction which is, in itself, a very desirable one; that is, a construction in which he need only use a single double jointed sup-

porting means which may be situated at about midway between the upper and lower ends of the shield member, instead of using two supporting members, one at the top and one at the bottom. The disadvantage of using two supporting members, and the corresponding advantages of using a single supporting member, will be further referred to.

In order to carry out his general scheme of mounting the shield member, applicant employs a framing for the shield (a framing which may be referred to as the supporting element of the windshield, being that part of the construction which most directly supports the shield member itself) which comprises a longitudinal member extending across the face of 299030

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the shield, substantially parallel thereto, and having at its ends engaging and carrying means which engage and support the shield member. In the form of device shown in this case, this supporting element, when specifically referred to as a supporting element for the glass, may be understood as composed of the vertical tube or hollow rod 22, and the bracket 17 and 18 at its upper and lower end engaging and supporting the glass 15. A supporting element is thus formed for the glass, which, as expressed in some of the claims, embodies a longitudinal member or rod which is spaced from the face of the glass, or which extends across the face of the glass and is spaced therefrom. This method of supporting the glass gives applicant that offset pivot which he desires and also gives him a means for

supporting the glass which does not necessitate the framing of the glass around its vertical edges and, specifically, does not necessitate that the glass have a frame on its inner vertical edge—the edge closest to the side post 13 of the main windshield. This is a considerable advantage in that the view at or about the direction of the main post 13 of the windshield is not unduly obstructed.

Furthermore, this particular construction and arrangement of supporting element for the glass gives applicant the opportunity of placing the pivot at a point between the opposite vertical edges of the glass, without having to place the pivot in the plane of the glass; and without the necessity of using two pivoted supporting elements 23. And, furthermore, this construction makes a very sightly and highly desirable construction.

In fact, it will be noted that applicant employs preferably a single supporting member 23; and this single supporting member engages and supports the supporting element of the glass at a point which

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is not only between the opposite vertical side edges of the glass, but is also between the top and bottom edges of the glass, and is preferably spaced from the plane of the glass. These features are made the subject matter of certain of the claims herewith presented.

Now the general advantage of a single supporting member 23 over two or more pivoted supporting members is very marked. In the first place of course to use two supporting members involves an

increase in complication and in cost of construction. In the second place, where two supporting members are used, as for instance in Holland, unless some special means are used to overcome the difficulty, it is always necessary to entirely loosen all of the joints before an adjustment of position of the shield; because if these joints are not entirely loosened, they are apt to be loosened to different degress of loosenes, and an attempted movement of the glass will then very likely twist and strain and fracture the glass. This difficulty is, in general, overcome by the use of a single pivoted supporting means rather than a double pivoted supporting means. This single pivoted supporting means is common to the construction herein and to the construction shown in applicant's co-pending application which has been filed March 26, 1919, Serial No. 285,365. But there are some specific differences in regard to the immediate supporting element of the glass between these two applications, and it will be well here to point out what these differences are in order to show what applicant claims in this re-issue application and what he more specifically claims in the co-pending application. In the construction herein shown it will be noted that the brackets 17 and 18 rotate on the ends of the vertical rod 22, the rod being held from rotation in the part 24 by the fact that the wedge shaped end of the part 33 projects through a slot in the hollow rod 22. Applicant

then uses a single clamping operating means embodying the clamp rod 19 which simultaneously clamps or loosens the two brackets 17 and 18 upon the end of the hollow rod 22. This same rod 19, in combination with the part 33, also forms a single unitary means, not only for clamping the hinged joint on the axis of the rod 19 but also for clamping the hinge joint at the pin 26. At the same time, the rod 22 is, by the same action, clamped in the part 24 (if it is not tightly set in that part).

Now in the construction in the co-pending application the rod 22 is made to be rigid with regard to the glass 15, so that the glass cannot turn when the rod is held rigidly. The clamp part corresponding to the member 23 then rigidly clamps the vertical rod as well as the pivot pin corresponding to the pin 26. Thus, in one case, applicant provides means for simultaneously loosening or tightening the two separated pivotal points on the rod 22, and further provides a single unitary means for simultaneously tightening or loosening all of the pivotal points; and in the other case he provides that there shall be but a single point of pivotal movement on the axis of longitudinal rod which parallels the glass. In the one case all of the joints are very easily loosened, and are also uniformly loosened, because they are manipulated by one and the same device; and the difficulties inherent in having two or more supporting members with their separately locked pivotal joints is thus completely overcome. And in the other case applicant uses only a single point of pivotal movement on the vertical lath supporting

rod; and all of the difficulties with regard to the twisting, straining and breaking of the glass are thereby overcome in a very simple manner.

With the foregoing noted features in view it is thought that the claims will be found directed to allowable subject matter.

Respectfully,
JAMES T. BARKELEW,
Atty for Keller.

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Div. 10, Room 235
Address only
"The Commissioner of Patents,
Washington, D. C.,"
and not any official by name.

Paper No. 2.
All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

C/B

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE,
Washington.

July 18, 1919.

[Stamped:] U. S. Patent Office, Jul. 18, 1919. Div. X. Mailed.

James T. Barkelew,
Central Bldg.,
Los Angeles, California.

Please find below a communication from the EXAMINER in charge of the application of Clarence D. Keller, Serial No. 299,030, filed May 22, 1919 (Reissue) Windshields.

JAMES T. NEWTON,
Commissioner of Patents.

In response to letter filed June 13, 1919.

Since a mistake has been made in that the wrong drawing was filed in this case, it is returned and the proper drawing required. The drawing filed is an exact duplicate of that in applicant's new case, Serial No. 285,365.

Claims 4, 7, 8, 9, and 21 are rejected on

French patent, 444,525, Pub. Oct. 12, 1912 296-84. This patent is so pertinent that it is not thought necessary to apply it to these claims.

Claims 5, 14, 16 and 17 are rejected on the French patent cited above, taken in connection with

Vickerey, 132,633, Oct. 29, 1872, there being no invention in view of Vickerey in supporting the auxiliary shield 2 of the French patent from a single point located at the back of the shield.

Claim 14 is also met in such structure as is shown in Wiederer, 381,452, Apr. 17, 1888, 45-99.

Claims 6, 10, 11, 12, 13, 15, and 18 are rejected on

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the French patent, cited above, taken in connection with

French patent to Delamare, 470,413, Sep. 10, 1914, 45-99, (1 sheet). In the Delamare device the parts are revised, i. e. the rod is on the fixed member instead of on the movable one but this is nothing more than an interchanging of the parts.

It is not thought to involve invention in view of Delamare to employ a supporting rod and single clamp on the device shown in the French patent first cited.

These claims are also rejected on the French patent, first cited, taken in connection with Wiederer, cited above. Wiederer shows the idea of securing the supporting rods to the back of the main frame instead of to the back of the auxiliary frames but this is merely an interchanging of the parts and involves no invention.

Claim 19 is rejected as being functional. The single means is not qualified in any way hence the whereby clause does not follow from the structure recited.

Claims 1 to 3 and claims 20 and 22 appear to be allowable.

There is an unnecessary multiplicity of claims in this case.

Claim 13, line 4, what is meant by "supporting engaging"? See also Claim 15, line 4.

T. H. MITCHELL,
Exr. Div. 10.

J. D. C.

Drawing returned 7-18-19.

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George W. E. Atkins, First Vice-President.

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Los Angeles, Calif. 4.

1919 Aug 5 AM 5 34.

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Commissioner of Patent,

Washington, D. C.

Recognize Meyers Cushman and Rea of Washington my associate in applications of C. D. Keller Nos 299,030 and 285,365 filed May 22 nineteen and March 26 Nineteen Letters. Confirmation follow. Subject matter windshields.

JAMES T. BARKELEW.

290030

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Ebith Attorney

Serial No. Paper No 3

Amendment a

Counsel.

PEOPLE'S INSTITUTE AUG 9 1919 U.S. PATENT OFFICE

IN THE UNITED STATES PATENT OFFICE

9121

U.S. PATENT OFFICE AUG 11 1919 DIVISION X

In re application of
Clarence D. Keller,
WIND SHIELDS
Filed May 22, 1919,
Serial No. 299,030. Room 235.

Washington, D. C., Aug. 9, 1919.

Hon. Commissioner of Patents,

Sir:

Responsive to Office action of July 18, 1919, I hereby authorize and request entry of the following amendment:

IN THE CLAIMS

Claim 4, cancel the period at the end of the claim and add and adapted to clamp a stationary member, and a single member for adjusting said clamping means upon the supporting element and a stationary member.

a

Claim 5, line 2, after "rod" insert --extending parallel to said shield member--

Claim 7, line 6, cancel "adjustable" and substitute --permitting movement--

Claim 8, line 4, change "in" to --within--

Claim 9, cancel the period at the end of the claim and add --having a clamping member located therein.-

Claim 13, line 4, cancel "supporting".

Same line, before "member" insert --supporting--

Cancel claim 14.

Claim 15, line 4, before "member" insert --supporting--

Same line, cancel "supporting".

Cancel claims 16 and 17.

Claim 21, line 2, before "means" second occurrence, insert

—a single adjusting—

REMARKS.

The above amendments made in the light of recent interviews kindly granted by the Hon. Primary Examiner and his assistant, it is thought, place this case in condition for allowance.

As to the Examiner's statement that there is an unnecessary multiplicity of claims in this case, it is submitted that each and every one of the claims may be readily distinguished and that it is necessary in order to adequately cover the invention to obtain the allowance of claims in number approximate to those now presented. In view of the extreme commercial importance of applicant's device and the facility with which imitators may change small features thereof to avoid the claims (changes which now cannot be readily foreseen) it is submitted that it would be an undue hardship upon applicant to require the cancellation of claims which while allowable, are objected to merely because they are somewhat similar to other allowed claims. No two claims now presented are identical, and it is thought that the cancellation of the claims which appear to be met and unduly broad, the case should now be passed to issue.

CLAIMS.

Claims 4, 7, 8, 9 and 18 (the last mentioned claim formerly 21) as amended, it is thought differentiate from the French patent #444,525 in an obvious manner. The amendments incorporated in these

claims have been already submitted to the Examiner and it is thought a discussion of them is unnecessary in view of the clear manner in which they cause the

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claims to differentiate from the reference.

Claims 6, 10, 11, 12, 13, 14 and 15 (the last two mentioned claims formerly 15 and 18) are presented for reconsideration for the reason that it is thought that the Examiner is unwarranted in aggregating two references from distinct and non-analagous arts in order to anticipate a combination which is clearly cooperative from a patentable standpoint and which due to this unquestionable cooperation is extremely valuable in the commercial field. These claims, each and every one, are confined to the windshield art and specify a distinct combination. In order to anticipate these claims the Examiner is attempting to build up a reference, and at that, is doing more than merely combining two structures, but as he states (paragraph 2, page 2, last Office action) would change the structure of the Delamare device or the structure of the Wiederer patent in order to anticipate these claims. If the Examiner will apply his references to the claims he will find that even with these changes in construction which he suggests, and of which there is no hint or suggestion in the prior art, in a large number of instances the references will not read upon the claims. For instance in the Wederer patent there is shown no

means for adjusting the tube D so as to clamp the same to the joint members J and furthermore the tube D is not connected to the mirror K by means of brackets.

Applicant would have it understood, however, that he is presenting these claims for reconsideration not merely because with the modifications of structure the Examiner suggests the references cannot still be read upon the claims, but mainly because he feels that the Examiner is unwarranted in

resorting to the aggregation of structures he has employed in order to meet claims to a clear and cooperative combination.

As to claim 19 it is suggested that the Examiner's contention that the same is functionable is untenable. The word "means" in line 4 calls for structure, the structure being defined by the whereby clause, and it is thought that the present practice of the Office permits claims of this character. The word "means" may be construed to cover any structure called for by the following functional clause.

It is thought that this case may now be passed to issue.

Respectfully,
JAMES T. BARKELEW,
Attorney for Applicant.

#4
Letter

DIV. 10, Room 235,
Clarence D. Keller (Reissue)
application on WINDSHIELDS
Serial No. 299,030,
Filed May 22, 1919.

Los Angeles, California, Aug. 7, 1919.

The Commissioner of Patents,
Washington, D. C.

Sir:

In response to Examiner's action of July 18th, 1919, the proper drawing is sent herewith in substitution for the drawing which was sent by mistake to be filed in this case and which the Office returned. Please file this drawing.

Respectfully,
JAMES T. BARKELEW,
Attorney for Keller.

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#5

Assoc. Power of Atty.

[Stamped:] U. S. Patent Office, Aug. 12, 1919. Division X.

POWER OF ATTORNEY.

Div. 10, Room 235.

Re application of
Clarence D. Keller,
Serial No. 299,030,
filed May 22, 1919.
(Reissue) Windshields.

Los Angeles, California, Aug. 5, 1919.

The Commissioner of Patents,
Washington, D. C.,

Sir:

In the above identified application I hereby appoint appoint MYERS, CUSHMAN AND REA, of Washington, D. C., my Associate Attorneys, with full power to act in my behalf.

JAMES T. BARKELEW,
Attorney for Keller.

[Twenty-five Cents U. S. Internal Documentary Stamps Attached. Cancelled.]

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40

2–60

Div. 10, Room 235
Address only
"The Commissioner of Patents,
Washington, D. C.,"
and not any official by name.

Paper No. 5.
All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

C/B

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
Washington.

August 22, 1919.

[Stamped:] U. S. Patent Office, Aug. 22, 1919. Div. X. Mailed.

Myers, Cushman & Rea,
Wash. Loan & Trust Bldg.,
Washington, D. C.

Please find below a communication from the EXAMINER in charge of the application of Clarence D. Keller, Serial No. 299,039, filed May 22, 1919. Windshields (Reissue).

JAMES T. NEWTON,
Commissioner of Patents.

The new drawing has been filed.

Claim 7 is rejected on

Shettler,
1,268,773, June 4, 1918, 296–85.

This patent shows a clamp that engages the side bar of the auxiliary shield at a single point and the clamp 35 is adapted to clamp the side post of a wind shield and be adjustable thereon, as called for in this claim.

Claims 8 and 9 are met in terms in, and are rejected on

Boynton, 1,251,332, Dec. 25, 1917, 296–85.

The double clamp called for in this claim is com-

posed of the clamps 32 and 51 which have spring pressed balls 60 (See Fig. 7) within the clamping means, etc.

Claims 10, 11, 12 and 13 merely recite a shield member with a rod secured to it and spaced therefrom. No clamps, supports or anything else is recited. In fact claims 10, 11 and 12 fail to recite any means for attaching the rod to the auxiliary shield. They merely recite the shield and rod with no connecting means whatever. These claims are rejected on

Baldwin, 1,078,765, Nov. 18, 1913,

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299,030—2.

which shows a screen or window, 1, with a rod 10 across its face and spaced therefrom.

Claims 1 to 6, inclusive, and claims 14, 15 and 16 appear to be allowable.

Applicant's attention is directed to British patent, 5,319, Mar. 5, 1907, 296–84, and British patent 25,-
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569, Nov. 4, 1940, 296–84, which may be of use in amending. The former shows the broad idea of employing a front shield having auxiliary side shields attached thereto, while the latter shows what appears to be arms O (See Fig. 4) for supporting the auxiliary shield from the main shield.

J. D. C.

T. H. MITCHELL,
Exr. Div. 10.

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AUG 25 1919 U.S. PATENT OFFICE

Serial No. Paper No 7

Amendment B

9125

IN THE UNITED STATES PATENT OFFICE

In re application of
Clarence D. Keller,
Wind Shields,
Filed May 22, 1919,
Serial No. 299,030.

U.S. PATENT OFFICE
AUG 26 1919
DIVISION X

Room 230.

Washington, D. C.,
August 25, 1919.

Hon. Commissioner of Patents,

Sir:

Responsive to office action of August 22, 1919, we hereby authorize and request entry of the following amendment:

IN THE CLAIMS:

Claim 7, line 3, cancel "and" (second occurrence)

Same claim, line 6, cancel all after the semicolon to the end of the claim.

Change the semicolon to a comma and add and a single adjusting means for rigidly connecting the supporting means to the bracket and the supporting element.

Claim 8, line 4, after "and" insert --a single--

Same claim, same line, after "hold" insert --both of--

Claim 9, before the period at the end of the claim insert --adapted to hold both of the joints of the clamping means against movement--

Claim 10, line 1, cancel the last word in the line, "a"

Line 2, change "element" to --means--

Same claim, line 2, after "member" insert --secured

at its ends to the shield member in a position—

Claims 11, 12 and 13, line 1, of each claim cancel the last word, "a"

Line 2, of each claim change "element" to —means—.

REMARKS.

Rejected claim 7 has been amended to avoid the newly discovered reference to Shettler by specifying in this claim, a single adjustment (the nut 21 and rod 19) for rigidly connecting the bracket 23 to the bracket 31 and the tube 22.

Claims 8 and 9 as amended, call for a member adapted to hold both of the joints against movement. In the patent to Boynton, the spring 59 and ball 60 are located only in the joint 51 and the means for holding the joint 32 against movement constitutes the two jaws 21 and 22 which frictionally hold the ball 33. Consequently there are two distinct means for holding the two joints against movement in the Boynton structure.

Claims 10, 11, 12 and 13 are presented for reconsideration in connection with the patents to Baldwin upon which these claims now stand rejected. It is true, as the Examiner states, that these claims do not mention the knuckle joint for securing the shield to the side post. However, these claims are drawn to a structure which is adapted to be marketed as a complete article and may be secured to a wind shield in any desirable manner. The claims specify

a shield member and supporting means embodying a longitudal member substantially parallel to the plane of the shield member and spaced from the plane thereof. The claims also call for a rod extending across the face of the shield member. Baldwin shows merely a rod 10 which is secured to the frame of a window or other object serving a similar purpose. Of course, the equivalent of the window in the present instance would be a wind shield since the patentee states that his device may be used upon

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an automobile wind shield. It should be borne in therefore, that Baldwin's rod 10 located upon the window frame 1, is merely the equivalent, in the illustrated use of his device, of locating the same upon the side post of a wind shield and he does not show a structure such as is called for in these claims, namely;

1. An auxiliary wind shield.

2. Supporting means therefore embodying a rod extending across the face of the shield member or parallel to the plane of the shield member and spaced from the plane thereof.

As thus amended, it is thought that this case is in condition for allowance.

Respectfully,
MEYERS, CUSHMAN & REA,
Assoc. Attys.

JJD/P.
299030
45

Div. 10, Room 235
Address only
"The Commissioner of Patents,
Washington, D. C.,"
and not any official by name.

Paper No. 8.
All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

C/B

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
Washington.

Oct. 24, 1919.

Myers, Cushman & Rea,
Wash. L. & T. Bldg.,
Washington, D. C.

Please find below a communication from the EXAMINER in charge of the application of Clarence D. Keller, filed May 22, 1919. Ser. No. 239,030. Windshields.

JAMES T. NEWTON,
Comissioner of Patents.

Responsive to amendment of Aug. 25, 1919.

After a careful reconsideration of this case, claims 10, 11, 12, 13 and 15 are rejected on

Tischler, 1,110,973, Sept. 15, 1914.

The member 9 of this patent is the "shield mem-

ber" recited in these claims. The rod 11 and the bracket 13 correspond respectively to the rod 19 and brackets 18 of applicant's device.

The remaining claims appear to be allowable.

T. H. MITCHELL,

J. D. C.

Exr. Div. 10.

299030

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Washington, D. C.,"
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Paper No. 9.
All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

C/B

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.
Washington.

Nov. 3, 1919.

[Stamped:] U. S. Patent Office. Nov. 3, 1919. Div. X. Mailed.

Myers Cushman & Rea,
Wash. L. & T. Bldg.,
Washington, D. C.

Please find below a communication from the EXAMINER in charge of the application of Clarence D. Keller, filed May 22, 1919. Ser. No. 299,030. Windshields.

JAMES T. NEWTON,
Commissioner of Patents.

This is supplemental to Office action of Oct. 24, 1919. Claims 10, 11, 12, 13 and 15 are rejected, also on

Olson, 783,383, Feb. 21, 1905.

The member F is the longitudinal rod recited in these claims.

T. H. MITCHELL,
Exr. Div. 10.

J. D. C.
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Serial No. Paper No. 10

Amendment C.

9128

Cox

IN THE UNITED STATES PATENT OFFICE.

[Stamped:] U. S. Patent Office. Nov. 6, 1919.

Division X.

In re Application of Clarence D. Keller
Windshields.
Filed May 22, 1919.
Serial No. 299,030.

Room 235.

Washington, D. C., November 4, 1919.

Hon. Commissioner of Patents,
Sir:

Responsive to office actions of October 24 and November 3, 1919, we hereby authorize and request entry of the following amendment:

IN THE CLAIMS:

Cancel claims 10, 11 and 12.

Rewrite claim 13 as follows:

10. In an auxiliary windshield the combination of a shield member and supporting means therefor C' embodying a longitudinal member substantially parallel to the plane of the shield member and spaced from the plane thereof, said longitudinal member

terminating between the ends of the shield member, means at each end of said longitudinal supporting member movable relatively to said member and engaging the shield member, and a single supporting means for the longitudinal member engaging said member between its connections to the shield member.

Claim 15, line 5, before "swinging" insert —a single —.

Same claim, cancel the period at the end of the claim and add the following:

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Keller S. No. 299,030

C² engaging said member at a single point between its connections to the shield member.

Renumber the remaining claims accordingly.

REMARKS.

It is thought that claims 10 and 12 (formerly claims 13 and 15) as amended are allowable over both Tischler and Oson, it being pointed out that each of these claims as amended call for a longitudinal bar extending across the shield having brackets connecting the same to the shield, the bar being movable relatively to said brackets. The claims also specify a single supporting means 24 engaging the bar at a single point between its connection to the shield.

Each of these features of applicants construction are of high practical importance, the move-

ment of the bar relatively to the brackets permitting an adjustment of the shield in a horizontal plane by merely loosening the nut 21. The single supporting arm affords a very simple construction which may be economically manufactured and, as compared to the construction shown in Tischler, is far more suitable for the use for which applicant intends his structure.

It is requested that this application now be passed to issue.

Respectfully,
MEYERS, CUSHMAN & REA,
Attorneys for Applicant.

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Div. 10, Room 235
Address only
"The Commissioner of Patents,
Washington, D. C.,"
and not any official by name.

Paper No. 11.
All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

FS.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
Washington.

[Stamped:] U. S. Patent Office, Dec. 19, 1919. Div. X. Mailed.

Meyers, Cushman & Rea,
Washington Loan & Trust Bldg.,
Washington, D. C.

Please find below a communication from the EXAMINER in charge of the application of Clarence

D. Keller, for Windshields, filed May 22, 1919, Serial No. 299,030.

JAMES T. NEWTON,
Commissioner of Patents.

In response to amendment filed Nov. 5, 1919.

After a careful reconsideration of this case, it is thought that claims 4 and 5 do not define the structure shown and described. The claims are clearly readable on the structure in applicant's co-pending application #285,365 but not on the structure disclosed in this case. The claims call for "adjustable supporting means for the supporting element embodying a double hinge-joint clamping means engaging and clamping the supporting element." The joints shown are at 26 and at 17 and 18. The supporting element 23 does not form a hinge-joint at 24 with the sleeve 22, hence there is no double hinge-joint clamping means shown. Claim 8 and 9 also contain this feature. Claims 4, 5, 8 and 9 are therefore, rejected as not being readable on the structure disclosed.

Claim 11 is rejected on

Mann 751,526 Feb. 9, 1904 (This reference meets every feature of this claim except that mentioned in the introductory phrase. This alone is not thought to be sufficient.

Claim 15 is rejected on Boynton of record taken in connection with Br. Patent to Sargearnt 11,325 May 6, 1897 (135-11, 1 sheet, there being no invention in substituting clips 4, 5, 6 of Sargeant for the

Serial No. 299,030
Page 2.

hinges 93, 94, 95 and 96 as a supporting means for the auxiliary shield in the Boynton patent.

This claim is also rejected on Sargeant cited above and

Bonte 1,184,652 May 23, 1916 (296-85) These references are combined in the same way as the two above.

Claims 1, 2, 3, 6, 8, 10, 12, 13, 14, and 16 appear to be allowable.

T. H. MITCHELL,
Examiner Div. 10.

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APPLICATION FILED FEB 7 1920

Serial No. Paper No 12
Amendment

9130

IN THE UNITED STATES PATENT OFFICE

U.S. PATENT OFFICE
FEB - 9 1926
DIVISION X

In re Application of
Clarence D. Keller,
Wind Shields,
Filed May 22, 1919.
Serial No. 299,030. Room 235.

- - - - - - - - -

Washington, D. C.,
February 7, 1920.

Hon. Commissioner of Patents,

Sir:

Responsive to Office Action of December 19, 1919, please enter the following amendment.

IN THE CLAIMS:

Cancel claim 5 and substitute the following:

5. In an auxiliary wind shield, the combination of a transparent shield member, supporting means for the shield member comprising a rod extending across the face of the shield member and spaced therefrom, means on the rod engaging and supporting the shield member at spaced points of support and adjustable supporting means for the rod engaging the rod at a point within the side and and edges of the shield member.

Cancel claims 8 and 9 and substitute:

8. In an auxiliary wind shield, the combination of a shield member, a supporting element for the shield member, adjustable supporting means for supporting the supporting element embodying a double hinge-joint clamping means, and means embodied in the clamping means and adjustable at a single point to frictionally hold both of its joints against movement.

9. In an auxiliary wind shield, the combination of a shield member, and adjustable supporting means therefor embodying a double hinge-joint clamping means having a single point

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of adjustment for frictionally clamping both of its joints.

and 15 of each claim
Claim 14, line 1, before "shield" insert -transparent-

Add the following claims:

17. In an auxiliary wind shield, an unframed transparent shield member, and adjustable carrying means for the member embodying a pivotally adjustable supporting member situated entirely between the side and end edges, respectively, of the shield member and spaced therefrom.

18. In an auxiliary wind shield, a transparent shield member, and adjustable carrying means for the member embodying a two hinge-joint adjustable supporting member situated entirely between the side and end edges, respectively of the shield member, both pivotal joints thereof being spaced from the face of the shield member.

19. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal member extending across the face of the shield member and a supporting member engaging said longitudinal member at a point intermediate the end edges of the shield, said shield member being adjustable about the center of said longitudinal member as an axis.

20. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom, shield engaging and supporting means on said member, and a supporting member engaging the rod intermediate the side and end edges of the shield, said shield being adjustable about the axis of the rod as a center.

21. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom, shield engaging and supporting means on said member, a supporting member engaging the rod in-

termediate the side and end edges of the shield, said shield being ~~clamped~~ adjustable about the axis of the rod as a center, and means to lock said shield member in any selected position about the axis of said rod.

22. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom, shield engaging and supporting means on said member, a supporting member engaging the rod intermediate the side and end edges of the shield, said shield being ~~clamped~~ adjustable about the axis of the rod as a center, and means to frictionally clamp said shield member in any selected position about the axis of said rod.

23. In an auxiliary wind shield, the combination of a transparent shield member, and supporting means therefor embodying a longitudinal member secured to the shield, said member extending across the face of the shield and being spaced from the plane thereof, a supporting member engaging the longitudinal member between the ends of the latter, said shield having a pivotal movement about the axis of said longitudinal member as a center, means for pivotally connecting said last mentioned member to the side post of a windshield and single adjusting means for locking all pivotal joints of said supporting means.

REMARKS

Applicant has carefully considered the Examiner's rejection of claims 4, 5, 8 and 9 on the ground that they do not read upon the disclosure in this application. After carefully considering the claims in question applicant has cancelled claim 5, but claims 4, 8 and 9 have been retained and are thought to be clearly readable upon this construction. Referring first to claim 4, this claim specifies a supporting ele-

ment for the shield. This supporting element may be construed as one or both of the brackets 17 and 18. The claim further calls for adjustable supporting means for the supporting element embodying a double hinge-joint clamping means engaging and clamping the supporting element. This double hinge-joint clamping means comprises the rod 19, having the head and adjustable nut 21, and the tube 22. When the nut 21 is tightened the tube 22 is clamped at the joints, the same makes with the brackets 17 and 18 and therefore the tube 22 and rod 19 constitute a double hinge-joint clamping means engaging and clamping the brackets. Furthermore, claim 4 mentions the fact that this clamping means is adapted to clamp a stationary member, viz: the hinge pin 26. This latter statement is in conformity with the disclosure in view of the fact that the pin 33 forms with the rod 19 and tube 22 a unitary locking or clamping means.

Referring to claims 8 and 9 which have been rewritten, these claims may be construed in the same manner as claim 4. The supporting element for the wind shield is the bracket 17 or the bracket 18 (or both brackets) and the double hinge-joint clamping means embodied in the adjustable supporting means may be interpreted as referring to the tube 22 and rod 19 which are adjustable at the nut 21 to hold both of the joints against movement.

Former claim 5 has been cancelled and transferred to applicant's co-pending application in view of the fact that this claim specifies the structure of

that application and is not readable on the disclosure of this application.

Referring to the new claim 5 it is pointed out that this claim is very similar to the allowed claim 6, but is slightly more broad than this claim in that it does not specifically refer to brackets on the rod and does not limit the engagement of the rod supporting means to a point between the shield supports. It is thought that this claim will be found to be clearly allowable.

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Claims 8 and 9 as amended, it is thought, will be found to be allowable as each of these claims specify double hinge-joint clamping means, and, further, mention that there is but a single point of adjustment for this clamping means. In the references of record, for instance the patent to Boynton, the double hinge-joint clamping means shown must be adjusted at more than one point and it is thought that applicant is entitled to a claim such as this so that both forms of his device may be covered. Boynton shows at 32 and 51 (Fig. 1) double hinge-joint clamping means but he has found it necessary to provide the set screw 72 at one joint, and at his joint 32 he provides no adjustment. Therefore, even Boynton's construction would not anticipate the terms "double hinge-joint clamping means" which are specific to applicant's disclosure. Claim 11 is submitted for reconsideration over the patent to Mann which shows nothing more than a support

for a mirror and is taken from an art which is clearly nonanalogous to the wind shield art. Certainly the Examiner would not suggest that at the time when Keller made his invention, and when there were no prior side wings, it was possible for one to obtain suggestions from such an art as this to which the Examiner has resorted to anticipate applicant's invention. Claim 15 is also submitted for reconsideration over the patents to Boynton and Sargeant of record in view of the fact that the Examiner is attempting to anticipate a clear combination by an aggregation of references without any suggestion whatsoever in the prior art. The Examiner has not denied that advantages are derived by applicant's construction, which he states appears to be the substitution of clips 4, 5 and 6 of Sargeant for the hinges 93, 94, 95 and 96 as a supporting means for the auxiliary shield in the Boynton patent. The Examiner has pointed to no disclosure in the prior art wherein such a substitution is suggested, and in view of the fact that the patent to Sargeant is from an art that is not analogous to

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the wind shield art, it is thought that the Examiner's position is unsound.

It is thought that the new claims, 17 to 23 inclusive, will be found to be clearly allowable as they are very similar to claims already allowed in this case with the possible exception of claim 17. In order to facilitate examination of these claims and

an understanding of their scope, applicant will point out the similarity between these claims and those already allowed, but reference will first be had to claim 17.

Claim 17 specifies first, an unframed shield member. A wind shield, particularly a side wing, due to its position, is preferably unframed and unbound and the glass is not supported by an encircling frame but is supported directly and solely from a member connected to the glass between its end and side edges. By such a construction the maximum degree of vision is at all times allowed and is a feature which is highly important when it is considered that these shields are placed in a position adjacent the driver's seat and must be of a construction which permits the driver's view to be practically unobstructed. Moreover, by placing the support between the side and end edges of the shield a portion of the shield projects to one side of the support and therefore overlaps the main wind shield of the machine effectually keeping out rain, wind, etc. The claim additionally specifies the support as being spaced from the shield, a feature of extreme importance in that it permits a wider range of adjustment than if this were not the case. It is thought unnecessary, at this time, to develop the above mentioned features of the construction, as specified in claim 17, in view of the fact that stress has already been laid upon them in the prior prosecution of this application and it is thought necessary, at this time, merely to call the Examiner's attention to the

fact that the claim includes a construction directed to these features.

Claim 18 is slightly more limited than claim 17 and for this reason is thought to be allowable.

Claim 19 is similar to claim 6 already allowed, and in addition to the limitations of the allowed claim, mentions the fact that the shield member is adjustable about the center of the longitudinal member as an axis. This does not mean that the longitudinal member rotates in relation to the shield, but is intended to cover both of applicant's constructions, and to properly cover a construction in which the shield member pivots in the manner claimed.

Claim 20 is very similar to claim 19 but covers a construction in which the supporting member engages the rod not only between the end edges of the shield but also between the sides edges, as distinguishing from the patent to Tischler of record, wherein the rod 11 is not engaged between the end edges of the shield 9 but probably might be interpreted as being engaged between the side edges of the shield.

Claims 21 and 22 are more specific than claim 20 and differentiate therefrom by calling for means to lock the shield member in any selected position about its axis of rotation, and more specifically (Claim 22), frictionally clamping the shield member.

Claim 23 calls specifically for a single adjusting means for locking all the pivotal joints of the supporting means.

With this case as thus amended, it is thought that the same may be passed to issue if the Examiner reconsiders his prior rejection of claims 11 and 15. Should the Examiner adhere to his former position it is requested that action be made final for purposes of appeal.

Respectfully,
MEYERS, CUSHMAN & REA.

JJD/E.
299030
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Serial No. Paper No. 14 Amendment E.

IN THE UNITED STATES PATENT OFFICE.

[Stamped:] U. S. Patent Office, Mar. 6, 1920.
Division X.
In re Application of Clarence D. Keller.
Wind Shields,
Filed May 22, 1919.
Serial No. 299030

ENTER.

Room 235.
Washington, D. C., March 4, 1920.

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

Supplementing amendment of February 7, 1920, it is requested that the following amendments be entered in this application.

Claim 9, line 2, cancel "a" and substitute -an unframed transparent-

Claim 11, line 1, before "transparent" insert -unframed-

Claim 15, line 1, cancel the "a" before transparent and substitute -an unframed-

REMARKS.

The above amendments are made after discussing this case with the Primary Examiner and are thought to differentiate the claims from references of record.

Respectfully,
MEYERS, CUSHMAN & REA.

JJD/E.
299030
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Ex H

Div. 10, Room 235
Address only
"The Commissioner of Patents, Washington, D. C.,"
and not any official by name.

Paper No. 13.
All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
Washington.

Mar. 6, 1920.

Myers, Cushman & Rea,
Loan & Trust Bldg.,
Washington, D. C.

Please find below a communication from the EXAMINER in charge of the application of Clarence D. Keller, for Windshields, filed May 22, 1919. Serial No. 299,030. (Reissue).

JAMES T. NEWTON.
Commissioner of Patents.

Responsive to amendment filed Feb. 7, 1920.

Claims 9, 15 and 17 are rejected on the references of record. They do not seem to the Examiner to be warranted in this reissue case, and are so vague and uncertain as to tend more to confusion than to a clear, concise statement of the invention as required by the Rules of the Office.

The other claims in the case are ample in scope and number to cover the invention.

This action may be considered final and appeal will lie.

T. H. MITCHELL,
Examiner, Div. 10.

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IN THE UNITED STATES PATENT OFFICE

MAR 9 1920

9137

U.S. PATENT OFFICE
MAR 9 1920
DIVISION A

In re Application of

Clarence D. Keller,

Wind Shields.

Filed May 22, 1919.

Serial No. 299,030.

Entered

Room 235.

Washington, D. C.

March 9, 1920.

Hon. Commissioner of Patents,

Washington, D. C.

Sir:

Responsive to Office Action of March 6, 1920, please enter the following amendment.

IN THE CLAIMS:

Cancel claim 9 and substitute:

9. In an auxiliary wind shield, the combination of an unframed transparent shield member, a supporting element for the shield member embodying a rod spaced from and parallel to the shield member, and spaced means thereon connected to and supporting the shield member at spaced points of support, and adjustable supporting means for the rod engaging the rod at a point between the end edges of the shield member.

Cancel claim 15 and substitute:

15. In an auxiliary wind shield, the combination of an unframed transparent shield member, a supporting element for the shield member embodying a rod spaced from and parallel to the shield member, and spaced means on the rod engaging and supporting the shield member at spaced points

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the rod engaging the rod at a point between the end edges of the shield member.

Cancel claim 17 and substitute:

17. In an auxiliary wind shield, the combination of an unframed transparent shield member, a supporting element for the shield member embodying a longitudinally extending rod spaced from and parallel to the shield member, and spaced means on the rod engaging and supporting the shield member at spaced points of support, and a single adjustable supporting means engaging the rod at a point between the end edges of the shield member.

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REMARKS Cls 18-23

It is pointed out that the rejected claims have all been cancelled and three claims substituted therefor which are substantially identical to the allowed claim 6, but are not limited to the term "brackets on the supporting rod". These claims appear to be clearly allowable and a prompt issuance of this application is therefore requested.

Respectfully,
Myers, Eichman & Rea

299030
62

Div. 10, Room 235
Address only
"The Commissioner of Patents,
Washington, D. C.,"
and not any official by name.

Paper No. 15.
All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
Washington.

June 21, 1920. Examiner's Amendment.

Mr./epb

[Stamped:] U. S. Patent Office, June 21, 1920. Div. X. Mailed.

Myers, Cushman & Rea,
Wash. Loan & Tr. Bldg.,
City.

Please find below a communication from the EXAMINER in charge of the application of C. D. Keller, filed May 22, 1919, Pat. No. 1,284,357, Ser. No. 299,030, for WINDSHIELDS.

JAMES T. NEWTON,
Commissioner of Patents.

In accordance with the provisions of Order No. 2308, dated March 12, 1917, which reads in part as follows:

* * * * *

Obvious informalities in the application may be corrected by the examiner, but said correction must be in the form of an amendment, approved by the Principal Examiner in writing, placed in the file, and made a part of the record. The changes specified in the amendment will be entered by the clerk in the regular way.

* * * * *

the changes, hereinafter specified, are made by the examiner in the application above indentified.

Should these changes not be satisfactory to the applicant, appropriate amendment may be proposed under the provisions of Rule 78, provided the specification has not been printed.

The application has been amended as follows:

Claim 21, line 7, and claim 22, line 7, ("adapted") is changed to (adjustable)

T. H. MITCHELL,
Exr. Div. 10.

R. F. M.
299030
63

2—184.

Div. 10
A. L.
Address only The Commission of Patents, Washington, D. C.

Serial No. 299,030.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
Washington.

June 22, 1920.

[Stamped:] U. S. Patent Office, June 22, 1920.

Div. X. Mailed.

Clarence D. Keller,
Los Angeles, Calif.

Sir:

Your application for REISSUE of Patent No. for improvement in

WINDSHIELDS

has been examined and allowed.

The patent will be forwarded to you as soon as practicable, in due order of business.

Very respectfully,
J. S. NEWTON,
Commissioner of Patents.

Myers, Cushman & Rea,
Washington Loan & Trust Bldg.,
City.

299030
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C. D. KELLER.

WINDSHIELD.

APPLICATION FILED MAY 22, 1919.

Reissued July 20, 1920.

14,919.

Fig. 2.

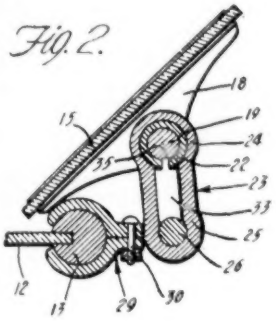


Fig. 5.

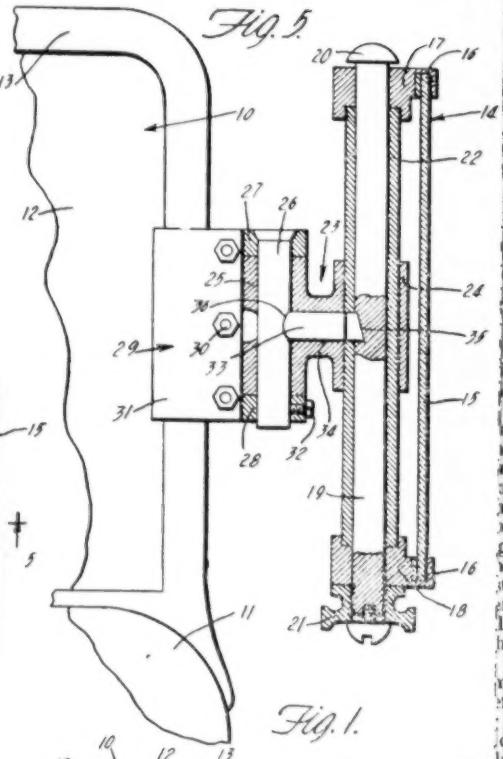


Fig. 3.

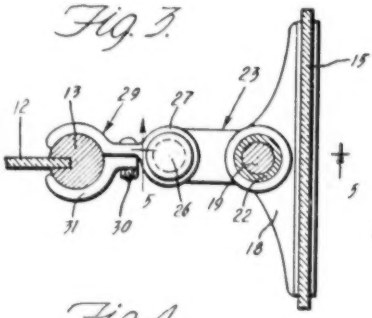


Fig. 4.

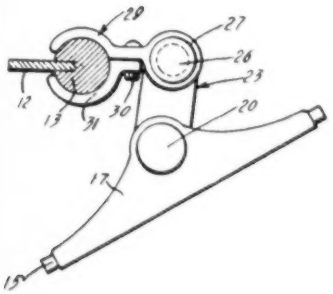
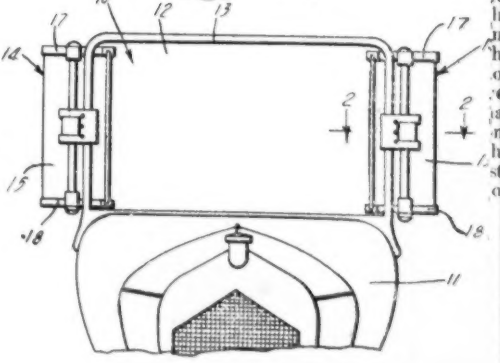


Fig. 1.



Inventor
Clarence D. Keller
by James F. Barker
his Attorney

UNITED STATES PATENT OFFICE.

CLARENCE D. KELLER, OF LOS ANGELES, CALIFORNIA.

WINDSHIELD.

14,919. Specification of Reissued Letters Patent. **Reissued July 20, 1920.**

Original No. 1,284,357, dated November 12, 1918, Serial No. 174,770, filed June 14, 1917. Application for reissue filed May 22, 1919. Serial No. 299,030.

To all whom it may concern:

Be it known that I, CLARENCE D. KELLER, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles, State of California, have invented new and useful Improvements in Windshields, of which the following is a specification.

This invention relates to a windshield and particularly pertains to ar adjustable windshield for automobiles.

It is common practice to fit automobiles with a transversely extending transparent shield which is secured within a suitable frame and mounted upon the dash of the vehicle body. Due to the narrow width of these shields, the wind draws in around the edges and creates considerable draft within the vehicle. It is the principal object of this invention to provide auxiliary transparent shield members which may be secured in an adjustable manner at the opposite sides of the main windshield and more thoroughly prevent the creation of a draft through the vehicle body.

Another object of this invention is to provide a windshield of the above class which does not require the use of a large mounting frame and may thereby be held in position without obstructing the view.

Another object of this invention is to provide a peculiar pivotal mounting for the shield which will allow it to be universally moved throughout a horizontal plane and in relation to the edge of the main shield.

Another object of this invention is to provide simple operating means for instantly locking the pivotal mounting in any desired position.

It is a further object of this invention to provide a windshield which will be neat in its design, simple in its construction and will act to enhance the appearance of the vehicle upon which it is mounted rather than to depreciate it.

Other objects will appear hereinafter.

The invention is illustrated, by way of example, in the accompanying drawings in which:

Figure 1 is a view in front elevation illustrating the auxiliary shields as mounted at the opposite sides of the main shield; Fig. 2 is a view in horizontal transverse section, as seen on the line 2—2 of Fig. 1, and particularly illustrates the double hinged joint and the position of the auxiliary shield in relation to the main shield when it is desired to entirely prevent the creation of a draft through the vehicle; Fig. 3 is a view similar to Fig. 2 illustrating the windshield as swung outwardly to an obstructing position alongside the main shield; Fig. 4 is a view similar to the two preceding figures, illustrating the auxiliary windshield as swung forwardly of the main shield so that a circulation of air will be effected through the vehicle; Fig. 5 is an enlarged view in transverse section, as seen on the line 5—5 of Fig. 3, illustrating the detail construction of the windshield mounting and its manner of locking.

Referring more particularly to the drawings, 10 indicates a vertical disposed windshield which is mounted transversely of an automobile body 11, as particularly shown in Fig. 1. This shield is formed of a plate glass portion 12 which is bound by a frame 13. The frame 13 is formed with vertical side posts, upon which are secured the auxiliary windshields 14. It will be understood that the detail construction of the windshield 10 is not material and that the present invention relates particularly to auxiliary shield members which are demountably secured to the vertical posts of the windshield frame 13.

The auxiliary shields 14 consist of rectangular plate-glass portions 15 supported at their upper and lower ends within channels 16 of upper and lower supporting brackets 17 and 18. These brackets are particularly shown in Figs. 2, 3 and 4, where it will be seen that the channels 16 extend the entire width of the glass and unite with the main portion of the brackets, which portions are rotatably mounted upon a vertically disposed shaft 19. This shaft is formed with a head 20 which retains it within the brackets and is formed at its other end with threads upon which a locking nut 21 is adapted to be positioned. The brackets 17 and 18 are spaced from each other by means of a sleeve 22 which fits within counter-bores formed in the adjacent faces of the brackets. This sleeve is secured within a knuckle joint bracket 23, as particularly shown in Fig. 5.

The joint bracket 23 is formed with two parallel bearings 24 and 25, one of which

accommodates the sleeve 22 and the other is adapted for the reception of a hinge pin 26. This pin extends through ears 27 and 28 forming a part of a mounting bracket 29. The mounting bracket is adapted to be clamped upon the vertical frame members of the windshield 10 by means of bolts 30 and a clamping plate 31. The pin 26 is secured in its intended position by means of suitable pins or set screws 32. It will thus be seen that the auxiliary shield is provided with universal horizontal movement in relation to the main shield as it swings upon the shaft 19 and the pin 26. The bracket 29 is, to a certain extent as will be seen from Fig. 4; adjustable around the side post 13; and this adjustment adds also to the possibilities of adjustment of the side wing with relation to the main windshield. But, for most purposes of adjustment, the bracket 29 forms merely a mounting bracket to provide a supporting means about which the member 23 may be swung through a very large angle to effect various adjustments of the side wing. The bracket 29 is also adjustable vertically on the side post to adjust the vertical position of the side wing.

One of the important features of this invention is the fact that the auxiliary shield may be locked in any desired angular relation to the windshield by the manipulation of a single locking member. This is accomplished by a lock bolt 33 which extends through a horizontal bore 34 communicating with the vertical bores of the bearings 24 and 25. One end of this bolt is tapered and conforms to a tapered face 35 formed on the side of the shaft 19. The other end of the bolt is rounded to become seated within an arcuate recess 36 formed in the side of the hinge pin 26. It will thus be seen that when the lock nut 21 is tightened upon the shaft 19 it will bear upon the lock shaft of the bracket 18 and act to draw the shaft 19 downwardly. This will wedge the face 35 against the tapered end of the lock bolt 33 and will at the same time wedge the rounded end of the lock bolt against the recess in the hinge pin 26, causing the shaft and pin to be immovable in relation to each other.

In operation, the lock nut 21 may be rotated to relieve the shaft 19. This will permit the windshield to swing upon the shaft 19 and will also allow the shield and bracket 23 to swing around the pin 26. It will be evident that, due to this double pivotal mounting, the windshield may assume any desired angular position in front, at the side, or in the rear of the main shield. After the auxiliary shield has been thus adjusted, tightening of the nut 21, as previously described, will lock it in place.

It will thus be seen that the device here disclosed is formed of few parts which may be readily manufactured, are easily assembled, and may be conveniently operated, as described.

While I have shown the preferred construction of my windshield as now known to me, it will be understood that various changes in the construction, combination and arrangement of parts may be made by those skilled in the art without departing from the spirit of my invention.

I claim:

1. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, and means whereby the two joints of the shield may be simultaneously locked.

2. In an auxiliary windshield, the combination with a vertical supporting post, of a transparent shield member, brackets engaging said member at its upper and lower ends, means whereby said brackets may swing horizontally to adjust the shield, a secondary hinge adapted to act in combination with said first-named hinge to allow the shield to have universal horizontal movement in relation to the supporting post, means whereby the two joints of the shield may be simultaneously locked, and means for detachably securing the shield upon said post.

3. In an auxiliary windshield, a rectangular windshield glass, upper and lower supporting brackets having channels in which the glass is mounted and having alined bearings at one side of the glass, a spacing sleeve having its ends rotatably mounted in the bearings, a shaft extending through the bearings and through the sleeve, a lock-nut upon the shaft for tightening the bearings upon the sleeve, a knuckle-joint bracket having two parallel bearings; said sleeve being mounted in one bearing; there being a horizontal bore through the bracket and connecting the bearings and there being a passage through the sleeve in line with the bore and there being a tapered face upon the shaft in line with the bore, a lock-bolt mounted in the bore and having a tapered end engaging said tapered face, a mounting bracket having ears between which the other sleeve bearing is mounted, and a hinge pin inserted through the ears and bearing and having a recess to receive the other end of the lock bolt; said mounting bracket being adapted for engagement with the side post of a windshield, so that by loosening the lock-nut upon the shaft the parts may be loosened

move the windshield to a desired position ıd then by tightening the lock-nut the arts may be held rigid with the main indshield.

4. In an auxiliary windshield, the combiation of a shield member, a supporting ement for the shield member, and adjustble supporting means for the supporting ement embodying a double hinge-joint amping means engaging and clamping the ıpporting element and adapted to clamp a ationary member, and a single member or adjusting said clamping means upon ıe supporting element and a stationary ıember.

5. In an auxiliary wind shield, the combiation of a transparent shield member, suporting means for the shield member comrising a rod extending across the face of ıe shield member and spaced therefrom, ıeans on the rod engaging and supporting ıe shield member at spaced points of suport and adjustable supporting means for ıe rod engaging the rod at a point within he side and end edges of the shield member.

6. In an auxiliary windshield, the combiation of a shield member, a supporting ele- ıent for the shield member embodying a od and spaced brackets thereon engaging nd supporting the shield member at spaced oints of support, and a single adjustable upporting means for the rod engaging and upporting the rod between the spaced rackets.

7. In an auxiliary windshield, the combiation of a shield member, a supporting ele- ıent for the shield member, a mounting racket adapted to be mounted on the ost of a windshield, and adjustable there- n, a supporting means mounted on the racket to swing horizontally thereon and arrying the supporting element to swing ıorizontally with reference to the support- ng means, and a single adjusting means for igidly connecting the supporting means to he bracket and the supporting element.

8. In an auxiliary wind shield, the combiıation of a shield member, a supporting elenent for the shield member, adjustable supporting means for supporting the support- ng element embodying a double hinge-joint lamping means, and means embodied in he clamping means and adjustable at a sinle point to frictionally hold both of its oints against movement.

9. In an auxiliary wind shield, the combiıation of an unframed transparent shield nember, a supporting element for the shield nember embodying a rod spaced from and arallel to the shield member, and spaced neans thereon connected to and supporting he shield member at spaced points of suport, and adjustable supporting means for he rod engaging the rod at a point between he end edges of the shield member.

10. In an auxiliary windshield the combination of a shield member and supporting means therefor embodying a longitudinal member substantially parallel to the plane of the shield member and spaced from the plane thereof, said longitudinal member terminating between the ends of the shield member, means at each end of said longitudinal supporting member movable relatively to said member and engaging the shield member, and a single supporting means for the longitudinal member engaging said member between its connections to the shield member.

11. In an auxiliary windshield, the combination of an unframed transparent shield member, and a supporting element therefor embodying a longitudinal member substantially parallel to the plane of the shield member and spaced from the plane thereof, and means at each end of said longitudinal supporting member engaging the shield member, swinging supporting means carrying said longitudinal member, and the shield member being swingingly adjustable about the center of the longitudinal member as an axis.

12. In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a longitudinal member substantially parallel to the plane of the shield member, shield engaging and supporting brackets mounted and rotatable on the ends of the longitudinal member, and a single swinging supporting means for the longitudinal member engaging said member at a single point between its connections to the shield member

13. In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a supporting member and brackets, spacedly mounted thereon and engaging the shield member, said brackets being rotatable on the supporting member, and a single means whereby both brackets may be simultaneously held from rotation on said member or loosened to rotate thereon.

14. In an auxiliary windshield, the combination of a shield member, a supporting element therefor embodying a hollow rod and brackets rotatively mounted in spaced relation on the rod and engaging and supporting the shield member at spaced points, and a means embodying a clamping rod extending through the hollow supporting rod adapted to clamp the brackets to the supporting rod and hold them against movement thereon.

15. In an auxiliary wind shield, the combination of an unframed transparent shield member, a supporting element for the shield member embodying a rod spaced from and parallel to the shield member, and spaced means on the rod engaging and supporting

PAGES CUT O

the shield member at spaced points of support, and a single adjustable supporting means for the rod engaging the rod at a point between the end edges of the shield member.

16. In an auxiliary windshield, the combination of a shield member, and supporting means therefor embodying a rod substantially parallel to the member, brackets at the end of the rod engaging and supporting the member and rotatable on the rod, a stationary element, and a supporting and clamping device embodying a member engaging the stationary element and engaging and supporting the rod, and means for simultaneously setting and holding the said member against movement on the stationary element and the brackets against movement on the rod.

17. In an auxiliary wind shield, the combination of an unframed transparent shield member, a supporting element for the shield member embodying a longitudinally extending rod spaced from and parallel to the shield member, and spaced means on the rod engaging and supporting the shield member at spaced points of support, and a single adjustable supporting means engaging the rod at a point between the end edges of the shield member.

18. In an auxiliary wind shield, a transparent shield member, and adjustable carrying means for the member embodying a two hinge-joint adjustable supporting member situated entirely between the side and end edges, respectively of the shield member, both pivotal joints thereof being spaced from the face of the shield member

19. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal member extending across the face of the shield member and a supporting member engaging said longitudinal member at a point intermediate the end edges of the shield, said shield member being adjustable about the center of said longitudinal member as an axis.

20. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom shield engaging and supporting means on said member, and a supporting member engaging the rod intermediate the side and end edges of the shield, said shield being adjustable about the axis of the rod as a center

21. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom shield engaging and supporting means on said member, a supporting member engaging the rod intermediate the side and end edges of the shield, said shield being adjustable about the axis of the rod as a center, and means to lock said shield member in any selected position about the axis of said rod.

22. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal rod extending across the face of the shield member, and spaced therefrom shield engaging and supporting means on said member, a supporting member engaging the rod intermediate the side and end edges of the shield, said shield being adjustable about the axis of the rod as a center and means to frictionally clamp said shield member in any selected position about the axis of said rod.

23. In an auxiliary wind shield, the combination of a transparent shield member and supporting means therefor embodying a longitudinal member secured to the shield said member extending across the face of the shield and being spaced from the plane thereof, a supporting member engaging the longitudinal member between the ends of the latter, said shield having a pivotal movement about the axis of said longitudinal member as a center means for pivotally connecting said last mentioned member to the side post of a wind shield and single adjusting means for locking all pivotal joints of said supporting means.

In witness that I claim the foregoing I have hereunto subscribed my name.

CLARENCE D. KELLER

2—423

1919.

Class.....

CONTENTS:

Application.....papers.

1. Letter June 13, 1919.
2. Rejection July 18, 1919.
3. Amd't A, Aug. 9, 1919.
4. Letter and Sub. Drawing, Aug. 12, 1919.
5. Assoc. Power of Atty., Aug. 11, 1919.
6. Rejection, Aug. 22, 1919.
7. Amd't B., Aug. 25, 1919.
8. Rejection, Oct. 24, 1919.
9. Rejection, Nov. 3, 1919.
10. Amd't C, Nov. 5, 1919.
11. Rejection, Dec. 19, 1919.
12. Amd't D, Feb. 7, 1920.

12½. Amd't. E., Mar. 5, 1920.

13. Final Rejection, Mar. 6, 1920.
14. Amd't F, Mar. 9, 1920.
15. Exes Amd't, June 21, 1920.
16. .....
17. .....
18. .....
19. .....
20. .....
21. .....
22. .....

23. .....
24. .....
25. .....
299030
65

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Pltf. Exhibit No. 6. Filed 10/4/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

Defendants' Exhibit "A."

Machine Shop Die Makers Do Not Fail to Put This Number on Invoice

ADAMS–CAMPBELL CO.
1734 South Los Angeles Street
Phone 24981

Los Angeles, Cal., April 29, 1919. No. 1305

To National Brass.

Job Number Price Quoted

Please deliver the following:

8 Square Clamps
6 Oval "
4 Screws 252
0 Long Clamps
6 Washers

Put flat end of screw in casting.

ADAMS–CAMPBELL CO.
By KIPPER.

[Endorsed]: No. 86. Keller vs. Adams-Campbell. Defts. Exhibit "A." Filed 10/4/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

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Defendants' Exhibit "B."

Machine Shop Die Makers Do Not Fail to Put This Number on Invoice

ADAMS–CAMPBELL CO.
1734 South Los Angeles Street
Phone 24981

Los Angeles, Cal., May 16, 1919. No. 1381

To National Brass.

Please deliver the following: Job Number | Price Quoted

160 Washers 298

ADAMS–CAMPBELL CO.
By KIPPER.

13 Grease Gun Cstgs.	5¼
1 set " " purch Price.	39¢
	195
	10
	2.05
17 Bodies R to plate.	4.85
8 " 3 operation.	1.84

Replace and allow machines.

5¾# scrap
13½# "

19¼# @ 14¢....2.70
2 Screw Handles Replace.

Defendants' Exhibit "E."

Machine Shop Die Makers Do Not Fail to Put This Number on Invoice

ADAMS–CAMPBELL CO.
1734 South Los Angeles Street
Phone 24981

Los Angeles, Cal., May 16, 1919. No. 1377

To National Brass.

Please deliver the following:	Job Number	Price Quoted
35 Sets of Brass Clamps	298	

ADAMS–CAMPBELL CO.
By KIPPER.

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "E." Filed 10/4/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

Defendants' Exhibit "F."

Machine Shop Die Makers

ADAMS–CAMPBELL CO.

1734 South Los Angeles Street

Phone 24981

Do Not Fail to Put This Number on Invoice

Los Angeles, Cal., May 9, 1919. No. 1346

To National Brass.

Please deliver the following: Job Number / Price Quoted

10 Clamp Castings 276

ADAMS–CAMPBELL CO.
By KIPPER.

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "F." Filed 10/4/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

Date Apr. 30 19.

Windshield Company.

Address ..... Phone .....

Sold whom ordered ..... Order No. .....

Sold Cash $ ..... Check $ .....

Additions .....

DESCRIPTION

Model Auxilliary Windshield.

For Ford Type Cars

TIME

Employee	Date	Hours	Cost	Charge
Grote	Apr 25	13	2.11	
"	" 26	41	5.32	
"	" 28	83	10.94	
Knuth	" "	3	.94	
Grote	" 29	61	7.82	
Knuth	" "	23	3.44	
Jensen	" 30	3	.94	
Knuth mat.	" "	31	4.88	36.47
Jensen	May 1	83	10.94	
"	" 2	72	9.38	
"	" 3	32	4.38	
"	" 5	53	7.19	
"	" 6	83	10.94	
"	" 7	83	13.13	
"	" 8	83	10.94	
"	" 9	83	10.94	
"	" 10	3	.375	81.39
		Lab	118.06	
		Material	28.50	
			146.56	

Paid Ballal

June 10-'19

Rec'd

TOTAL

ADAMS-CAMPBELL CO.

No. 252 DATE Apr. 25, 1919

Date	Req. No.	Class of Material	Amount
Apr 25	1272	Patterns	5 35
28		Mat'ls per 2 slips	1 60
29		10' 5/16 C.R. Steel	40
29	1305		
			7 35
May 1		6" C.R. Steel cutting 30	1 50
3		1/4" " "	10
6		" " "	10
7		1" Tool Steel 4 1/2" Mach. Steel	60
	1305	Sideswing Castings	18 00
May 8		1" C.R. Steel 4 Mach. Screws	25
9		3/4" " " 7/16" "	60
			28 50

Walker
& Campbell E 84

Supt.

Chas. N. Walker

Lo Gossett

3881

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 2 - 1922

TOTAL

OVER FOR LABOR

252 Apr. 25, 1919. 252

Model Auxiliary Windshield.

May 14, 1919.

ADAMS CAMPBELL CO.

1730–1734 South Los Angeles St.

Job. No.	Name of Job.
252	5 Aux. Wind.

MATERIAL.

Date 4–28–19. Apr. 28, 1919.

Quantity	Material	Dimensions	Weight
1	5/16 C. R. 10¢.	3″ long	

April 28, 1919.

Signed—GROTE.

ADAMS CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
252	Auxiliary Windshield.

MATERIAL.

Date 4–28–19. Apr. 28, 1919.

Quantity	Material	Dimensions	Weight
	1/2 lb. Brass (Scrap) 4 Castings. $1.50.		

April 28, 1919.

Signed—GROTE.

ADAMS CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
252	Windshield.

MATERIAL.

Date 4/29/19. Apr. 29, 1919.

Quantity	Material	Dimensions	Weight
10 ft.	5/16 C. R. Steel. 40¢.		

Apr. 29, 1919.

Signed—GROTE.

ADAMS CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
252	Model Aux. Windshield.

MATERIAL.

Date May 1, 1919.

Quantity	Material	Dimensions	Weight
	C. R. Steel	3x3	6 lbs.
	$1.20		
	Cut .30		
	$1.50		

May 1, 1919.

Signed—JENSEN.

ADAMS CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
252	Model Aux. Windshield.

MATERIAL.

Date May 3, 1919.

Quantity	Material	Dimensions	Weight
	C. R. Steel. 10¢.	3/32t	¼ lb.

May 3, 1919.

Signed—JENSEN.

ADAMS CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
252	Model Aux. Windshield.

MATERIAL.

Date May 6, 1919.

Quantity	Material	Dimensions	Weight
	C. R. Steel 10¢.	3/33	¼ lb

May 6, 1919.

Signed—JENSEN.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
252	Model Aux. Windshield.

MATERIAL.

Date May 7, 1919.

Quantity	Material	Dimensions	Weight
	Tool steel.	1'x½	1 lb.
	Msg. steel.	⅛"	⅛ lb.

60¢.

May 7, 1919.

Signed—JENSEN.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
252	Model Aux. Windshield.

MATERIAL.

Date May 8, 1919.

Quantity	Material	Dimensions	Weight
	C. R. Steel.	7/16 R.	1 lb.
	F. H. Msg. Scs.	1" Iron	4

25¢.

May 8, 1919.

Signed—JENSEN.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
252	Model Aux. Windshield.

MATERIAL.

Date May 9, 1919.

Quantity	Material	Dimensions	Weight
	C. R. Steel.	7/16″R.	4 lb.

60¢.

May 9, 1919.

Signed—JENSEN.

June 10, 1919.

WINDSHIELD COMPANY,

252 Los Angeles, Calif.

For Labor and Material Making Tools
for Oval Clamp Type Windshields...

Labor..... 118.06

Material..... 28.50 ..... 146.56

276 Date May 5, 1919

Windshield Company

Address Phone

For whom ordered Order No.

Deposit Cash $ Check $

Conditions

DESCRIPTION

Manufacture Auxilliary Windshields.
F & E Mk. 11 Motor Transport Type.

TIME

Employee	Date	Hours	Cost	Charge
Pfanmeyer	May 5	1	60	
Houghton	" 7	7.2	938	
"	" 8	8.3	1094	
"	" 9	8.3	1094	
Chapin	" "	1.2	90	
Houghton	" 10	4.1	532	
Nute	" 12	2	240	
Houghton	" "	8.2	1063	
"	" 13	8.3	1094	
"	" 14	8.3	1094	
"	" 15	8.3	1094	
Johnson	" "	3	240	
"	" 16	8	640	
Houghton	" "	8.3	1094	
"	" 17	4.1	532	
Johnson	" "	1.3	140	
Houghton	" 19	8.3	1094	
Kean	" "	1.3	219	
Chapin	" 20	2	120	
Houghton	" "	8.3	1094	
Johnson	" "	3.1	260	
Houghton	" 21	8.3	1094	
Johnson	" "	4.1	340	
"	" 22	1.1	100	
Houghton	" "	8.3	1094	
"	" 23	8.3	1094	
Knust	" "	2	63	
TOTAL To Cost			17411	

113

276

19. eight lb.

19. eight lb



No. 276

113

276

Date				
Aug 6		1st Band Iron		
8		1" " " 1 1/4		20
8		2" " "		20
9	1346	17 Lbs Chump castings		2 11
9	1353	1 Strip Band Steel 1/16 x 1		60
12	1355	Machine Screws		375
12	1356	Plating 2 sets Brass, 1 Iron		649
13	1358	"		370
13		Mat as per slip		20
14		Mat as per slips		295
15		Material as per slip		40
16	1375	698 HH Brass		305
16	1376	Washers		45
16	1377	See 298		
16		Mat as per slip		92
17		1st Machine Steel 4 Clamps		20
19	1307	Clamps Buffers Rods nuts		980
19		Mat as per 2 slips		550
20		Cash Discount		39
20		Mat as per 4 slips		195
21	1395	Cutting Steel Die		1075
21		Mat as per slip		40
22		1/2" Brass Rod 1 1/2 x 12 Long		73
23		Mat as per 2 slips		110
26		2" H Screws 2 Nuts		18
27		1" R'd Tool Steel		20
27	1420	1 Pattern for Bracket		475
28		2" H. Screws		
29		4 R H "		
		TOTAL		11

To Card L — 6274

OVER FOR LABOR

919.
Weight
1 lb

919.
Weight
lb.

276 May 3, 1919. 276

Manufacture Auxiliary Winshields.

June 4, 1919.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshield.

MATERIAL.

Date May 6, 1919.

Quantity	Material	Dimensions	Weight
	Band iron.	1/8x1 1/4x20	1 lb.

15¢.

May 6, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshields.

MATERIAL.

Date May 7, May 8, 1919.

Quantity	Material	Dimensions	Weight
	Band iron.	1x1/8x12	1 lb

10¢.

May 8, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshields.

MATERIAL.

Date May 8. May 8, 1919.

Quantity	Material	Dimensions	Weight
	Band iron.	1x1/8x24	2 lb.

20¢.

May 8, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshields.

MATERIAL.

Date 14–5–19. May 13, 1919.

Quantity	Material	Dimensions	Weight
	Cold Roll Rd.	3/4R.x6"	1/2 lb.
4	5/16 Rd. Hd. screws.		
4	1/4 Fil. Hd. screws.		
	Drill rod.	5/16R.x8	1/4—

20¢.

May 13, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshields.

MATERIAL.

Date 14–5–19. May 14, 1919.

Quantity	Material	Dimensions	Weight
2	Tool steel.	3x1½x1½	4 lb.
1	Mach. steel.	2½x2x1	2½ lb.
1	Cold roll.	3/16x2¼x5	1 lb.
8	—10x3		
	.45.		
	2.45.		
	cut .50.		
	$2.95.		

May 14, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshield.

MATERIAL.

Date 15–5–19. May 15, 1919.

Quantity	Material	Dimensions	Weight
1.	Cold roll.	5/32x2¼x5	1½ lb.
20.	Band iron.	2¾x2x⅛	4 ¼ lb.
1.	" "	3⅝x1x⅛	3 ozs.

.40¢.

Band iron charged.

May 15, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshield.

MATERIAL.

Date May 16, 1919.

Quantity	Material	Dimensions	Weight
	Band iron.	24x1x⅛	2 lb.
2.	Tool steel Rd.	3x¾	1 lb.
5	Fil. dd. screws.	1x¼	
	70		
	Cut 20		

90¢

May 16, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No. 276 — Name of Job. Aux. Windshields.

MATERIAL.

Date 17–5–19. May 17, 1919.

Quantity	Material	Dimensions	Weight
	Mach. Steel.	2¼x3½x¼	1 lb.

20¢.

May 17, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No. 276 — Name of Job. Manufacture Auxiliary Windshields

MATERIAL.

Date May–19–19. May 19, 1919.

Quantity	Material	Dimensions	Weight
3″	Tool steel.	3″0	2⅝ lb
3″	Tool steel.	1″–1 3/16″	1 lb.

$1.50

May 19, 1919.

Signed—KEAS.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshields.

MATERIAL.

Date 19–5–19. May 19, 1919.

Quantity	Material	Dimensions	Weight
1	Mach. steel.	4¼x5x1	5 lb.
2	Tool "	2x3x1½	6 lb.

$3.00
.75

3.75
Cut .25

4.00

May 19, 1919.

Signed—C. HOUGHTON.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Manufacture Auxiliary Windshields

MATERIAL.

Date 5–20–19. May 20, 1919.

Quantity	Material	Dimensions	Weight
1	Plained up 4" punch pad.		

$1.50.

May 20, 1919.

Signed—R. L. WELLER.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Manufacture Auxiliary.

MATERIAL.

Date 5/20. May 20, 1919.

Quantity	Material	Dimensions	Weight
1 pc.	Bessimer	1/8"0	½ lb.

10¢.

May 20, 1919.

Signed—ARTHUR JOHNSON.

ADAMS-CAMPBELL CO.

1730-1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 20-5-19. May 20, 1919.

Quantity	Material	Dimensions	Weight
	Tool Steel Rd.	¾x4	½ lb.

25¢.

May 20, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730-1734 South Los Angeles St.

Job No.	Name of Job.
276	Manufacture Auxiliary Windshields

MATERIAL.

Date 5-20-19. May 20, 1919.

Quantity	Material	Dimensions	Weight
2	18-20 F. H. Screws.		

10¢.

May 20, 1919.

Signed—R. L. WELLER.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshields.

MATERIAL.

Date 21–5–19. May 21, 1919.

Quantity	Material	Dimensions	Weight
3	¼x20 F. H. screws		
3	6–32 Flat H. screws		
	Band iron	⅛x1½x4	¼ lb.
	⅜ drill rod	4″	3 ozs.
	Tool St. Round	2x1	13 ozs.

$1.00.

May 21, 1919.

Signed—C. HOUGHTON.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. Windshields.

MATERIAL.

Date 22–5–19. May 23, 1919.

Quantity	Material	Dimensions	Weight
	Bessem. Rod.	5/16x8	¼ lb.
1	¼x20 screw.		

15¢.

May 22, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 23–5–19. May 23, 1919.

Quantity	Material	Dimensions	Weight
4	1/4x20 Fil. Hd. screw.		
	Mach. Steel.	1/8x2 1/2x8	1 1/2 lb.
	Band iron.	12x1/8x1 1/2	3/4 lb.
	Cold Rl. Round.	2 1/2x3	4 1/2 lb.

85¢
Cut 15
—
$1.00

May 23, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 22–5–19. May 23, 1919.

Quantity	Material	Dimensions	Weight
2	¼x20 Fil. Hd. screw.		
	@		
	10¢.		

May 23, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 26–5–19. May 26, 1919.

Quantity	Material	Dimensions	Weight
2	¼–20 Fil. Hd. screw.		
2	" Hex nuts.		
	15¢.		

May 26, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730-1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 27-5-19. May 27, 1919.

Quantity	Material	Dimensions	Weight
2	Tool Steel Rd.	¾x3	1 lb.

50¢

May 27, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730-1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 28-5-19. May 28, 1919.

Quantity	Material	Dimensions	Weight
	2 ½-20 Fil. H. screws.		

10¢.

May 28, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No. 276 — Name of Job. Aux. W.

MATERIAL.

Date 29–5–19. May 29, 1919.

Quantity	Material	Dimensions	Weight
4	5/16–18 R. H. screws.		

10¢.

May 29, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No. 276 — Name of Job. Aux. W.

MATERIAL.

Date 30–5–19. May 30, 1919.

Quantity	Material	Dimensions	Weight
		2½x5x1/16	¼ lb.

15¢.

May 30, 1919.

Signed—C. HOUGHTON.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 2–6–19. Jun. 2, 1919.

Quantity	Material	Dimensions	Weight
4	R. Tool steel.	1⅞x¾ R.	1 lb

50¢.

Jun. 2, 1919.

Signed—C. HOUGHTON.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 3–6–19. June 4, 1919.

Quantity	Material	Dimensions	Weight
	R. Tool steel.	¾x1⅞	¼ lb.

15¢.

June 4, 1919.

Signed—C. HOUGHTON.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
276	Aux. W.

MATERIAL.

Date 4–6–19. Jun. 4, 1919.

Quantity	Material	Dimensions	Weight
2	Cold Roll.	¼x1¼x4	1¼
1	Mach. Steel.	4x4x5/16	1¾ lb.

45¢.

Jun. 4, 1919.

Signed—C. HOUGHTON.

June 10, 1919.

WINDSHIELD COMPANY,

276 Los Angeles Calif.

For Labor and Material making Tools and Experimental work on all other parts up to and including June 9th, 1919,.. $284.39

Labor..... $ 220.40

Material 63.99

Total..... $ 284.39

AMS-CAMPBELL CO. CARD NO. 1

NAME Windshield Co.

ADDRESS

ER NO. 276

CRIPTION Mfg. Auxiliary Windshields.

LABOR

y	EMPLOYEE	HOURS	AMOUNT
	Bal from Envelope		17411
24	Grote	3	94
"	Houghton	41	532
26	"	63	941
27	"	12	188
28	"	12	188
30	"	51	657
			19914
2	Houghton	83	1094
3	"	32	438
4	"	43	594
	Extra		2206
			6399
			28439

9. ight lbs.

9. ight lbs.

ADAMS-CAMPBELL CO. CARD NO. 1

NAME Wurdsfield Co.

ADDRESS

ORDER NO. 276

DESCRIPTION Mfg. Auxiliary Wa[illegible]

MATERIAL

DATE	REG. NO.	CLASS OF MATERIAL	AMOUNT	
		But from Envelope	62.74	
May 30		Mat as per slip	15	9.
			6289	
June 2.		1" Tool Steel 1 7/8 x 3/4 S.	50	ight
"		Mat as per 2 slips	60	lbs.
			6349	

9.
ight
lbs.

No. 898 Date May 16, 1919

For Windshield Company. 133

Address ..... Phone .....

By whom ordered ..... Order No. .....

Deposit ..... Cash $ ..... Check $ .....

Conditions .....

DESCRIPTION

35 Sets Oval Brass Clamp Type Kozy Wings.

TIME

Employee	Date	Hours	Cost	Charge
Berrigen	May 17	3 2	3 50	
Johnson	" 19	13	1 40	
Knuth	" 20	2	2 50	
Weller	" "	6 2	6 50	
"	" 21	4 2	4 50	
Johnson	" "	1 1	1 00	
Bone	" 22	6 2	3 90	
Weller	" "	4	4 25	
Johnson	" "	1	80	
Bone	" 23	2	1 20	
Nick	" "	1 3	1 40	
Johnson	" "	2 3	2 20	
Knuth	" 28	5	6 25	
Johnson	" 24	4 1	3 40	
"	" 26	2	1 60	
Houghton	" "	2	2 50	
"	" 27	9 1	9 07	
Johnson	" 27	4 2	3 60	
"	" 28	7 3	7 20	
Houghton	" "	2	63	
Johnson	" 29	4	3 20	
		Labor	70 60	
		Material	166 30	
			236 90	

Ruled

June 10 1919

TOTAL

PAID AUG 21 1919

19. eight lbs.

19. eight lbs.

FILED

JUN 2 1922

ADAMS CAMPBELL CO.

F. D. MONCKTON. CLERK.

May 16, 1914 19

133

Date	Req. No.	Class of Material	Amount
16	1381	R Brass Castings	10 40
16	1384	2 Strips Band Stl 4 x 2 2 qo mach Screws 10-32 x 3/4	2 50 35
16	1385	70 Wheel castings	
19	1388	70 long glass Supports	
19	1389	50 Bolts Carriage 5/16 x 1 1/4	80
20	1391	Plate 2 Gross 8-32 Screws	90
20	1392	127# Band Iron	7 50
19		21# C. R. Steel	2 10
21	1394	Bolts and nuts	18 75
20	1377	Side Wing Castings	5 80
21	1402	Plating 506 nuts 99 Bolts 5/8 Clamps 53 Nuts 2 Gr Rd Sq screws	27 18
23	1420	Plating	23 40
27		7# C. R. Steel	4 55
26	1413	Plating 58 Brass Washers	2 25
29	1431	Plating	7 75
27		R. B. Castings Nat. Brass	11 15
29		" Castings Windshield Posts Side Wing Stays	29 17
31	1436 1701	Nickel 18 Glass Supports	1 35
			166 30

19.

eight

lbs.

19.

eight

lbs.



OVER FOR LABOR

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
298	Oval Glass Clamps.

MATERIAL.

Date May 17. May 19, 1919.

Quantity	Material	Dimensions	Weight
3 Bars.	Cold Rolled.	7/16 in.	21 lbs.

$2.10.

May 19, 1919.

Signed—H. M. BARRIGER.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
298	35 Sets Oval Brass Clamps.

MATERIAL.

Date 5/27/1919. May 27, 1919.

Quantity	Material	Dimensions	Weight
1 pc.	C. R. Steel.	7/16".	7 lbs.

80c.

May 27, 1919.

Signed—ARTHUR JOHNSON.

298 May 16, 1919. 298

35 Sets Oval Brass Clamp Type Kozy Wings.

May 29, 1919.

Phone 79847

DICK SMITH

912 West 37th Place, Los Angeles, Cal.

Your Order No.
1

Our Order No.
3

Sold to—Mr. Kipper
Shipped to—Same
Address—Los Angeles, Calif.

How Shipped
Del.
Date
May 30, '19

Terms: 2% Discount if paid within 10 days from date of invoice. Interest of 1 per cent per month will be charged after 30 days.

Important—Refer to our Order Number when you pay this bill.

2 Sets of Model #1 Kozy Wings

Phone 79847

DICK SMITH
912 West 37th Place, Los Angeles, Cal.
Sold to—Kipper
Shipped to—Same
Address—1730 So. Los Angeles St.

Your Order No.
2
Our Order No.
6
How Shipped
Del.
Date
June 4

Terms: 2% Discount if paid within 10 days from date of invoice. Interest of 1 per cent per month will be charged after 30 days.

Important—Refer to our Order Number when you pay this bill.

2 Set #1—8x20 Kozy Wings.

Phone 79847

DICK SMITH
912 West 37th Place, Los Angeles, Cal.
Sold to—Kipper
Shipped to—Same
Address—Los Angeles & Wash.

Your Order No.
3
Our Order No.
8
How Shipped
Del.
Date
June 9

Terms: 2% Discount if paid within 10 days from date of invoice. Interest of 1 per cent per month will be charged after 30 days.

Important—Refer to our Order Number when you pay this bill.

2 Sets #1 Kozy Wings

Special Facilities for Intricate and Difficult Operations

Model Making — Manufacturing
Inventions Developed — Screw Machine Work
Gear Cutting — Stamping

ADAMS–CAMPBELL CO.

Machine Shop — Die Makers

Home Phone 24981

1730–1734 South Los Angeles Street

Los Angeles, Cal., June 20, 1919.

Your No. Sold to
Our No.

The amount below is now due and is not subject to discount.

Received of C. F. Smith One Hundred and Thirty-two ($132.00) Dollars on Windshield Acct.

ADAMS–CAMPBELL CO.
Ed. C.

Phone 79847

DICK SMITH

912 West 37th Place, Los Angeles, Cal.

Your Order No.

Our Order No.
12

Sold to—Kipper

Shipped to—Same

Address—L. A. & Washington Sts.

How Shipped
Del.

Date
June 26

Terms: 2% Discount if paid within 10 days from date of invoice. Interest of 1 per cent per month will be charged after 30 days.

Important—Refer to our Order Number when you pay this bill.

2 Sets 8x20 #1 Kozy Wings
2 Only Glass 8x20.

Phone 79847 — Your Order No.

DICK SMITH

912 West 37th Place, Los Angeles, Cal. — Our Order No. 22

Sold to—Kipper—Adams-Campbell. — How Shipped del.

Shipped to—City — Date

Address— — July 17

Terms: 2% Discount if paid within 10 days from date of invoice. Interest of 1 per cent per month will be charged after 30 days.

Important—Refer to our Order Number when you pay this bill.

3 Pair Hudson Special Kozy Wings
1 " 10x19 " "
2 " 10x18
2 " 9x18
1 pr. odd.—9x20
9x18

Windshield parts delivered to Mr. Dick Smith on the dates below:

Cap Nuts	Carriage Bolts	Brass Clamps	Knurled Wheels	Brass Washers	Steel Clamps	Glass Supports	Rods	Screws	
806	99	98		52	4		52	3 Gr.	May 26
					25 □				May 27
			17		25 O				
		56		16					May 27
		4				32			May 2–
					30				May 29
			64	58	20 Enameled.				
						18			
			20 Blk.	33	40	20 Blk.			June 4
	50 Blk.	8						3 gr.	June 7
806	149	166	101	159	144	70	52	6 gr.	
		192		150	77—O				
					69 □				

2 Sets #1.
1 Set #2.
1 Set #5.
1 Set #3.
2 Bent Steel Rod Glass Supports.
850 Fibre Washers.

June 10, 1919.

Windshield Company,
298 Los Angeles Calif.

For Labor and Material making 35 Oval Brass Clamp Type "Kozy" Wings Windshields 236.90

Labor,....70.60 Making 35 @ $2.02 Each.
Plating,..76.98 " " " 2.20 "
Castings,..89.32 " " " 2.55 "

$236.90 Making 35 @ $6.77 each.

No. 336 Date June 5 1919

For Wind Shield Company

Address

By whom ordered

Deposit Cash $ Check

Conditions

3881

143

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JUN 2 - 1922
F. D. MONCKTON,
CLERK.

DESCRIPTION

200 Sets Oval Clamps Left
Windshields.

1919

TIME

Employee	Date	Hours	Cost	Charge
Cardwell	June 5	11	1100	
Houghton	" "	3	90	
Cardwell	" 6	5	500	
Houghton	" "	4 2	563	
Chapin	" "	2 2	150	
Houghton	" 7	1 1	157	
"	" 11	5 2	688	
"	" 12	6	750	
Johnson	" "	3 2	280	
Chapin	" "	1 2	90	
Johnson	" 13	8 3	700	
"	" 14	4 1	340	
"	" 16	5 3	460	
"	" 17	3 3	300	
"	" 18	8 3	700	
Reas	" 19	4 2	360	
Houghton	" "	2 2	312	
Johnson	" "	1 2	120	
Houghton	" 20	1	125	
Cardwell	" 28	1 2	150	
			7240	
Chapin	July 1	1	60	
Cardwell	" 7	7 3	725	
Johnson	" "	5 2	440	
Reas	" "	1	125	
Cardwell	" 8	8 3	875	
Johnson	" "	8 1	660	

1919.
Weight

1919.
Weight
6 ozs.

140

298

For

Lab
Plat
Cast

ADAMS CAMPBELL CO.

EXHIBIT No. 1941

l. 143

DATE ... 19 14

Date	Req. No.		Amount
		360 Long Brackets	90 40
6	1460	245 # Castings	99 75
"	1458	13 Cast Steel Wheel	11 15
6	1466	3/4 x 1/2 Sockets, 1 Iron Sq. Nut, 5 20	1 40
11		Map as per 2 slips	1 60
12		3 Sockets	
13		Delaware 87 Castings	79 65
17		Castings assorted	2 65
		Castings	16 70
20	1538	1 gr. Iron Mach Screws	35
"	1537	1 gr. 10-32 3/4 Screw Plated	85
21	1528	4 3 1/2 clamps 40 Oval	6 75
26	1567	100 Brass cap nuts	2 40
"	1570	See [illegible]	- -
"	1572	12' Band Steel 1/8 x 2	70
			314 45
1	1593	203 Glass Supports Painted 206 Steel Rods	44 80
2	1600	Mach Scs Nuts & Bolts	13 20
2	5201	Plating	9 80
	1570	11 100 Cap Nuts	1 40
9	1631	Plating Lo Glass Supports 398 Brass Rods	23 25
10	1641	50 Carriage Bolts	80
11	1646	Plating 88 Knurled Wheel Nuts	4 85
	1593	Plating 402 Clamps 317 Steel Clamps	92 25
16	1673	13 2nd R.D. Castings	4 90
16	1677	Blk Enamel 15 Set Wind Shields	
		See Card I TOTAL	515 35

OVER FOR LABOR

1919. Weight

1919. Weight 6 ozs.

140

298

For

Lab
Plat
Cast

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
336	200 Sets Windshield Clamps.

MATERIAL.

Date 12–6–19. Jun. 11, 1919.

Quantity	Material	Dimensions	Weight
2	10/32x1" R. H. screws.		

10¢.

June 11, 1919.

Signed—C. HOUGHTON.

ADAMS–CAMPBELL CO.

1730–1734 South Los Angeles St.

Job No.	Name of Job.
336	200 Sets Winds. Clamps.

MATERIAL.

Date 11–9–19. Jun. 11, 1919.

Quantity	Material	Dimensions	Weight
	Hex. Brass.	7/16x4	6 ozs.

15¢.

Jun. 11, 1919.

Signed—C. HOUGHTON.

ADAMS-CAMPBELL CO.

1730-1734 South Los Angeles St.

Job No.	Name of Job.
336	200 Oval Windshield Bracket

MATERIAL.

Date Jun. 12, 1919.

Quantity	Material	Dimensions	Weight
3	Screws.	8/32x1/2".	

10¢.

June 12, 1919.

Signed—ARTHUR JOHNSON.

336 June 5, 1919. 336

200 Sets Oval Clamp Type Windshields

July 31, 1919.

CAMPBELL CO. CARD NO.

NAME Windshield Co.

ADDRESS

ORDER NO. 336

DESCRIPTION 200 Sets Oval Clamp Type

-1919- LABOR

DATE	EMPLOYEE	HOURS	AMOUNT
	Dist from Envelope		10175
July 9	Johnson	43	380
"	Cardwell	42	450
10	"	2	50
"	Johnson	8	640
11	Cardwell	33	375
			120 90
July 14	Johnson	22	200
18	"	3	60
			12338
19	Hahn	61	787
"	Johnson	41	340
21	Hahn	33	4469
"	Chapin	2	30
22	"	33	205
"	Bone	21	135
"	Mann	71	725
23	Bone	12	90
"	Mann	18	175
24	Bone	83	525
"	Gross	41	340
25	Bone	83	525
26	"	34	195
	Labor		16811
	Material		76681
			$ 93492

153

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144

Job No
336

Date
Quantit
3

June
Signe

336
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ADAMS-CAMPBELL CO. CARD NO. 1

NAME Windshield Co

ADDRESS

ORDER NO. 336

DESCRIPTION 200 Sets Oval Clamp Type

MATERIAL

DATE	REG NO	CLASS OF MATERIAL	AMOUNT
		Brot from Envelope	515 35
July 17	1646	40 Glass Supports but No Studs	5 30
16	1682	Polish 116 Glass Supports, 117 Steel Rods	25 60
16	1692	50 Glass Supports 100 Washers, 100 Brass "	10 17
18	2201	Plating 110 Bolts	1 25
"	1646	Plating 113 Wheels Buffed, 100 Supports	19 70
20	1696	2000 Orange Balls, 4 gro Saucers	
		10/32, 3 gro Screws 1/4 20	2 50
	1682	100 Steel Clamps 100 Knurled Bolts	
		229 Brass Washers	27 87
July 21	1700	2 Sq Yds Rubber per Sample	18 50
"	1702	265 ft Band 1/8 x 2	13 75
22	1712	105 Sheets Plain Chip	1 15
22	1681	38 Glasses	8 80
24		Rubber Stamps 2	1 10
28	1759		
			72 54
Aug 6	1682	235 Brass Clamps	
		125 Steel Clamps	40 97
		Material.	76 21

Job No
336

Date
Quantit
3

June
Signe

336
2(

TIME REPORT—ADAMS-CAMPBELL CO.

Date

Day

NO.	NAME OF JOB	OP. NO. 7 8 9 10 11 12 1 2 3 4 5 6	TIME	CHK.
2	Model Auxiliary Heinkel		SAT AM 7 24	
			SAT AM 11 45	

No. 3881
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JUN 2 - 1922
F. D. MONCKTON.
CLERK.

Keller v. U.S. ... Co. ... Page ... No. L. ... Filed 10/4/41 ... Clerk ... Deputy Clerk

153 ... o. ... o. ... d ... rom ... mth ... ber ... ms, ... fts. ... Ap- ... 2.

Job No
336

Date
Quanti
3

June
Sign

336
2(

J H Jensen — TIME REPORT — ADAMS-CAMPBELL CO. — Date 4/30/19 — Day Wednesday

NAME OF JOB	Op. No. 7 8 9 10 11 12 1 2 3 4 5 6	TIME	CHK.
Model Binder		7 22	
		2 4	
		2 10	
		4 0	
Model A Windshield.		4 2	
		4 51	

3881

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT
FILED
JUN 2 - 1922
F. D. MONCKTON, CLERK

Keller vs Adams Campbell Co. Defts EXHIBIT No. M Filed 10/4/21 191 Chas. N. Williams Clerk by La Jonas DEPUTY CLERK E-84

153 fo. o. d rom nth ber efts. ms. Ap- 2.

Job No
336

Date
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June
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Job No
336

Date
Quantit
3

June
Signe

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TIME REPORT — ADAMS-CAMPBELL CO.

Date ... Day

NO.	NAME OF JOB	OP. No. 7 8 9 10 11 12 1 2 3 4 5 6	TIME	CHK.
52	Anderson Construction Co.		TUE 7 27	
	v.		WED 2 00	
7	Atterbury & Bell Bros.		TUE 12 34	
			WED 2 22	
			TUE 4 46	

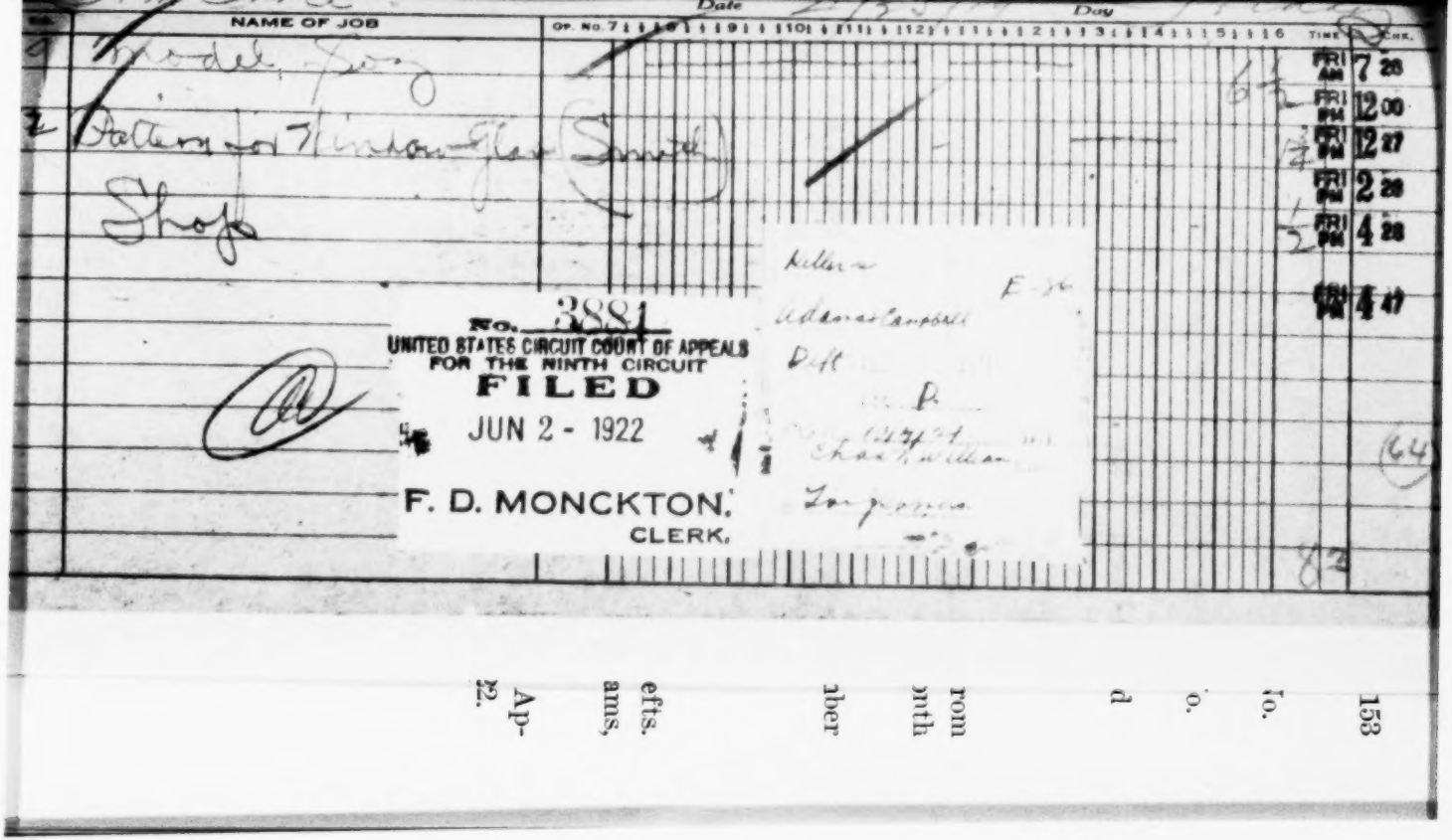
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Job No
336

Date
Quantit
3

June
Signe

336
2(



153 No. o. d romber nth efts. ams, Ap- 2.

Job No
336

Date
Quantit
3

June
Signe

336
2(

Defendants' Exhibit "Q."

Phone	Your Order No.
79847	1
DICK SMITH.	Our Order No.
912 West 37th Place, Los Angeles, Cal.	3
	How Shipped
Sold to—Mr. Kipper.	Del.
Shipped to—Same.	Date
Address—Los Angeles, Calif.	May 30, '19

Terms: 2% Discount if paid within 10 days from date of invoice. Interest of 1 per cent per month will be charged after 30 days.

IMPORTANT—Refer to Our Order Number When You Pay This Bill.

2 Sets of Model #1 Kozy Wings.
A. G. KIPPER.

[Endorsed]: No. E–86. Keller v. Adams. Defts. Exhibit "Q." Filed 10/4/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

Defendants' Exhibit "R."

Main 923 Los Angeles, Cal., April 1, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating of Every Description

Your Order 1080

Reg. No. 3748

100 Body Plugs @ 1¼.....1 25

Duplicate Inv.

Paid by Check No. ——

——————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 1, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers
360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1148–1080
Reg. No. 3749

	2		
#1148	134	Bases @ 5	6 70
1080	250	Body Plugs @ 1¼	3 12
			9 82
			10
			9.72

132 Bases O K as to Count as charged.
T. R. G.

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 2, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating of Every Description

Your Order 1170
Reg. No. 3752

151 Bases @ 5.....7 55

O K—T. R. G., 4/2/19

Paid by Check No. ——
———— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 8, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1180–1080–1077
Reg. No. 3773.

#1180	600 Bases 605 @ 5.....	30 00
1080	930 Body Plugs 932 @ 1¼...	11 62
1077	543 Push Buttons 546 @ ¾..	4 07
		45 69

J. J. 4/9/19

O K—Charge to count of red figures.

T. R. G. 4/9/19

Paid by Check No. ——

———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 9, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1180
Reg. No. 3779

1 Lot Fixtures .....8 ~~00~~
For Mr. Kipper.....$6.00

Pay this bill @ $6.00
Chgd—
Windshield Brackets.
Apr. 9—1919.

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 9, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order Mr. Kipper
Reg. No. 3780

110 Bodies Ground 06.....6 60

O K
In Settlement old a/c
T. R. G. 4/10/19

Paid by Check No. ——
———— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 11, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1180
Reg. No. 3782

1066 Bases @ 5.....53 30

O K—J. J.

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 16, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1192
Reg. No. 3800

683 Bases 05.....34 15

O K as to Check & Count.
T. R. G. 4/17/19

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 18, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1226
Reg. No. 3805

298 Bodies N. P. @ 9.....26 82

O K 4/18/19 J. J.

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 19, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1237
Reg. No. 3806

1268 Pistons @ ½.....6 34

O K—T. R. G. 4/22/19

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 21, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1226
Reg. No. 3809

302 Bodies N. P. @ 9.....27 18

O K—T. R. G. 4/22/19

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 22, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1226–1245
Reg. No. 3814

1226	311	Bodies N. P.	@ 9.....	27 99
1245	654	Pistons "	@ ½.....	3 27

31 26

O K—T. R. G. 4/22/19

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 23, 1919.

M—Adams-Campbell

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1245
Reg. No. 3817

400 Bodies N. P. @ 9.....36 00

O K—T. R. G. 4/24/19

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 25, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1253
Reg. No. 3820

300 Push Buttons @ ¾.....2 25

O K—T. R. G. 4/25/19

Paid by Check No. ——
———————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 25, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1241–1253–1270.
Reg. No. 3821.

#1245	300 Bodies N. P. @ 9.....	27 00
1253	1000 Push Buttons @ ¾....	7 50
1270	216 Set Screws @ ½.....	1 08
1253	380 Body Plugs @ 1¼.....	4 75
		40 33

O K—T. R. G. 4/26/19

Paid by Check No. ——
———— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 26, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1245–1265–1277
Reg. No. 3326

#1245	248	Bodies N. P. @ 9	22 32
"	52	" No chg	00 00
1265	500	Body Plugs @ 1¼	6 25
"	1034	Pistons @ ½	5 17
1277	338	Set Screws @ ½	1 69
			35 43

O K—T. R. G. 4/26/19

Paid by Check No. ——
———— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 28, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.

High Class Electro Platers

360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1259–1286
Reg. No. 3327

#1259	400 Bodies N. P. @ 9	36	00
1286	565 Pistons " @ ½	2	83
"	550 Set Screws @ ½	2	75
		41	58

O K—T. R. G. 4/28/19

Paid by Check No. ——
———— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 29, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.
High Class Electro Platers
360 So. Los Angeles St.

Enameling, Oxidizing and Plating
of Every Description

Your Order 1253
Reg. No. 3328

296 Bodies N. P. @ 9 .....26 64

O K—T. R. G. 4/29/19

Paid by Check No. ——
——————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

Main 923 Los Angeles, Cal., April 30, 1919.

M—Adams-Campbell Co.

To ALEX. T. BAGLEY & CO. Dr.
High Class Electro Platers
360 So. Los Angeles St.
Enameling, Oxidizing and Plating
of Every Description

Your Order 1259–1278
Reg. No. 3332

#1259 259 Bodies N. P. @ 9.....23 31
1278 674 Bases " @ 5.....33 70

57 01

O K—T. R. G. April 30/19

Paid by Check No. ——
—————— 191—

We hereby guarantee that the merchandise covered by this invoice has been produced or manufactured in accordance with the provisions of the Federal Child Labor Act of September 1, 1916.

ALEX. T. BAGLEY & COMPANY.

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "R." Filed 10/4/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Jun. 2, 1922. F. D. Monckton, Clerk.

Defendants' Exhibit "U."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "U." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

J. VICKERY.

Improvement in Toilet-Glasses.

No. 132,633. Patented Oct. 29, 1872.

Fig. 1.

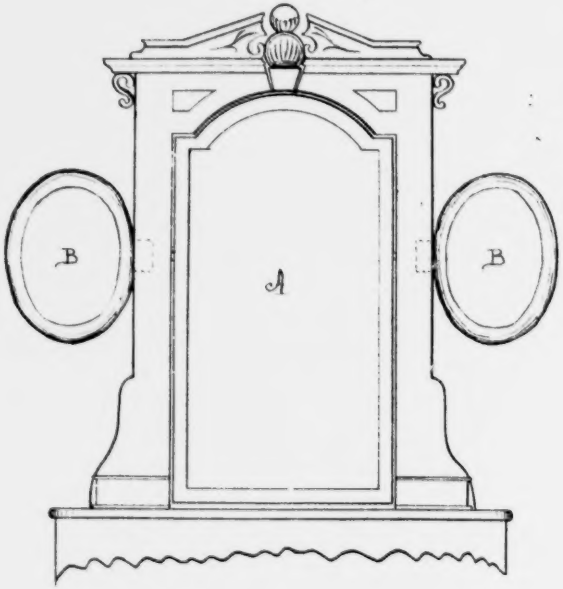


Fig. 2.

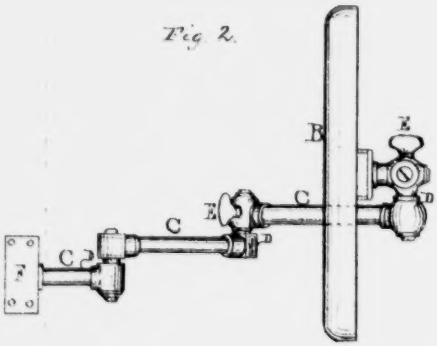
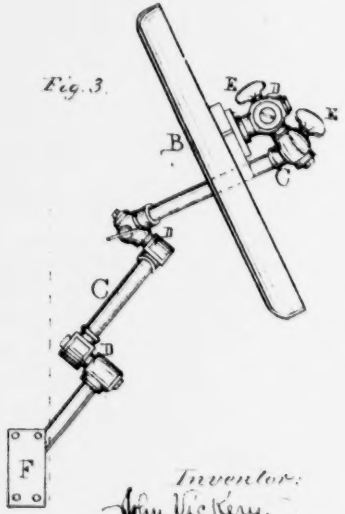


Fig. 3.



Witnesses:
Jacob C. Schiedt
Carey M. Macomber

Inventor:
John Vickery.
by
John A. Wiedersheim.

UNITED STATES PATENT OFFICE

JOHN VICKERY, OF PHILADELPHIA, PENNSYLVANIA

IMPROVEMENT IN TOILET-GLASSES.

Specification forming part of Letters Patent No. **132,633**, dated October 29, 1872

To all whom it may concern:

Be it known that I, JOHN VICKERY, of the city and county of Philadelphia and State of Pennsylvania, have invented a new and useful improvement in Toilet Glasses; and I do hereby declare the following to be a clear and exact description of the nature thereof sufficient to enable others skilled in the art to which my invention appertains to fully understand, make, and use the same, reference being had to the accompanying drawing making part of this specification, in which—

Figure 1 is a front view of my invention as applied to the looking-glass of a dressing-bureau or other article of furniture; and Figs. 2 and 3 are views showing different applications of the invention.

Similar letters of reference indicate corresponding parts in the several figures.

This invention relates to an attachment of one or more toilet glasses to the usual or main looking-glass, so that said toilet glass or glasses may be swung in various angles in order to reflect in the main glass any desired portion of the head or body or other parts of the room or objects within viewing distance or location.

It consists in constructing the holder or holders of tubular arms. It also consists in so constructing the arms as to have double movements.

Referring to the drawing, A represents a main glass which may be properly suspended from a wall or ceiling, attached to a dressing-bureau or other piece of furniture, or supported in any manner desirable or necessary. B represents the auxiliary toilet glass, which any number may be employed, although it is preferable that one is arranged on each side of the glass A. This glass may be hung to the wall or the standard of the bureau or other part of furniture, or elsewhere, so that the glass A and glass B are in juxtaposition. The means for hanging the glass B to the place of attachment and support consists of a series of arms, C C, coupled together and forming a continuation of each other, the couplings D having double axial movements; or, in other words, joints which may be said to be some-what universal, whereby said arms can be swung in any plane, and thus permit the glass B to assume any angle to the glass A. Thus face, back, side, and top of the head, the neck, and other portions of the body, besides objects in the room and elsewhere, will be reflected in the main glass, and the person using the same can bring to view said portions and objects in a convenient and reliable manner. I construct the arms of metallic tubes which possess lightness and strength, and if extended length of the arms is required, or enlarged size of the glass is necessary, the tubes do not proportionately increase the weight of the attachment of the auxiliary glass, which otherwise would render the device impracticable from the great strain on the joints and the place of application. The rotundity of the tubes permits the sections to turn on the coupling-joints, and thus the axes of the arms are produced. In order to retain the jointed arms in position I apply to the joints tightening or set screws E E, which hold the arms when fixed or set, yet are readily disengaged to permit the desired movement of the arms. Moreover, when the auxiliary glass is not required, the arms may be compactly folded, and, by moving them vertically or horizontally, the glass may be swung behind the main glass so as to be out of the way and concealed. The attachment of the ends of the arms to the glass B and standard of the glass A or other locality is by means of brackets F, which are respectively secured thereto, and while forming the supports for the ends of the arms also act as the bearings for the axes of said ends.

I am aware that a patent has been granted for an improvement in mirror-reflectors in which solid rods are used instead of tubular arms C, as employed in my invention, and I therefore lay no claim to the said invention above referred to.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

The tubular arms C jointed to each other by the double axial couplings D D, and provided with holding-screws E E, in combination with the auxiliary glass B, substantially as and for the purpose described.

The above signed by me this 17th day of September, 1872.

JOHN VICKERY.

Witnesses:

JOHN A. WIEDERSHEIM,
HARRY M. WIEDERSHEIM.

Defendants' Exhibit "V."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "V." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

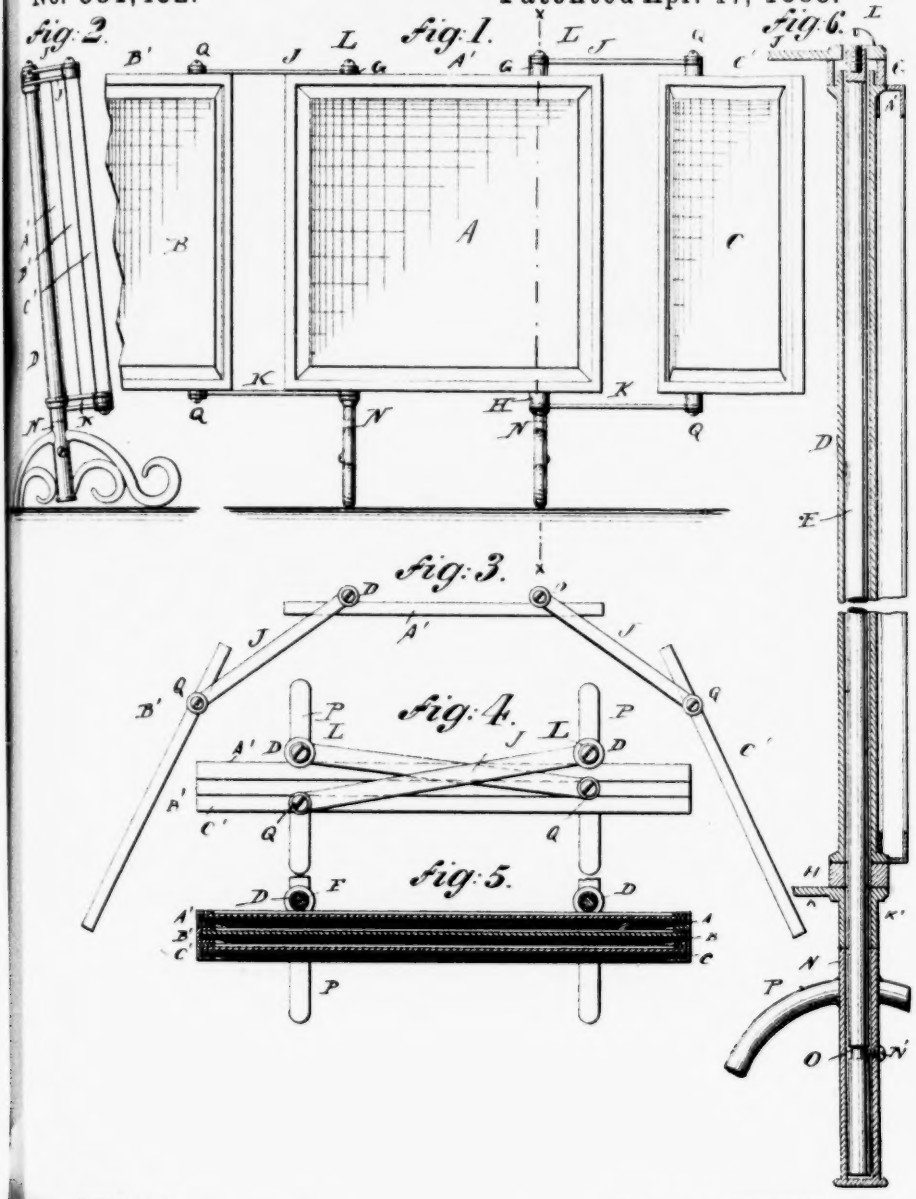
No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

(No Model.)

P. WIEDERER.

FOLDING MIRROR.

No. 381,452. Patented Apr. 17, 1888.



WITNESSES:

INVENTOR.

UNITED STATES PATENT OFFICE.

PETER WIEDERER, OF STAPLETON, NEW YORK.

FOLDING MIRROR.

SPECIFICATION forming part of Letters Patent No. 381,452, dated April 17, 1888.

Application filed December 28, 1887. Serial No. 259,235. (No model.)

To all whom it may concern:

Be it known that I, PETER WIEDERER, of Stapleton, county of Richmond, State of New York, have invented certain new and useful Improvements in Folding Mirrors, of which the following is a specification.

This invention relates to new and useful improvements in that class of folding mirrors known as "triplicate mirrors," and the object of my invention is to provide a new and improved mirror of this kind in which the side or wing mirrors can be folded on the central or main mirrors and the inner edges of the said side or wing mirrors can be moved a greater or less distance from the side edges of the main mirror.

The invention consists in the combination, with the main mirror, of two wing or side mirrors that are pivoted to the swinging ends of links pivoted at the top and bottom of the main mirror.

The invention also consists in the construction and combination of parts and details, as will be fully described and set forth hereinafter, and then pointed out in the claims.

In the accompanying drawings, Figure 1 is a front elevation of my improved folding mirror opened, parts being broken out. Fig. 2 is an end view of the same closed. Fig. 3 is a top view of the same opened, the legs being omitted. Fig. 4 is a top view of the same closed. Fig. 5 is a horizontal sectional view of the same closed. Fig. 6 is an enlarged detail vertical transverse sectional view on the line *x x*, Fig. 1.

Similar letters of reference indicate corresponding parts.

The central or main mirror, A, and the two side or wing mirrors, B and C, are of the same size.

To the back of the frame A' of the main mirror A the two upright tubes D are secured, and through each tube D a rod, E, is passed longitudinally, the lower ends of said rods projecting beyond the lower ends of the tubes. Washers G and H are placed on the upper and lower ends respectively of the tubes E, and on said washers the ends of the links J and K, respectively, are placed, the rods E passing through the washers and through apertures in the inner ends of the links.

Screws L are screwed in the upper ends of the rods, their heads resting on the links J. The links K are provided at their inner ends with sleeves K', that rest on the tubular legs N, surrounding the lower ends of the rods, said legs being held in place by the screws N' in the legs, the inner ends of the said screws passing into the annular grooves O of the rods E, to permit of turning the legs on the lower ends of the rods.

The legs N are provided with struts or braces P, which may be ornamented in different ways.

The swinging ends of the links J and K are mounted to turn on pivots Q on the upper and lower edges of the frames B' and C' of the wing or side mirrors, B and C.

If desired, the tubes D and rods E on the back of the main-mirror frame can be dispensed with, and said main-mirror frame provided with pivots on its top and bottom. As shown in Fig. 1, the pivots on which the links for the right wing-mirror are pivoted project farther beyond the top and bottom edges of the main frame than the pivots for the other wing-mirror, so as to permit the right-hand links J and K to fold over the left-hand links.

By turning the links on the pivots Q at the top and bottom of the frame A' of the main mirror A the wing-mirrors can be swung from or toward the main frame—that is, the wing-mirrors can be swung into different planes parallel to the main mirror either in front and behind the same, and as the wing-mirrors are mounted pivotally on the swinging ends of the links the inclinations of the said wing-mirrors to the main may be varied at pleasure.

The right-hand wing-mirror, B, can be folded on the face of the main mirror, the back of said wing-mirror B resting on the face of the main mirror, and the wing-mirror C can be folded on the face of the wing-mirror B, the back of the wing-mirror C resting on the face of the wing-mirror B.

In the triplicate or three glass folding mirrors made heretofore the face of one wing-mirror always rested on the face of the main mirror, and when the mirror was closed no

mirror-face was exposed, whereas the face of the outer mirror in my improved folding mirror is always exposed and can be used at any time as an ordinary mirror without requiring any adjustment or shifting of the parts.

Having thus described my invention, I claim as new and desire to secure by Letters Patent—

1. The combination of a main mirror, two wing-mirrors, upright tubes on the back of the main-mirror frame, rods in said tubes, links mounted to swing on said rods at the top and bottom edges of the main-mirror frame, and pivoted to the top and bottom edges of the said wing-mirror frames, substantially as set forth.

2. The combination of a main mirror, two wing-mirrors, upright tubes on the back of the main-mirror, rods passed longitudinally through said tubes, links mounted to swing on said rods at the top and bottom edges of the main-mirror frame, the wing-mirrors being pivoted to the swinging ends of said links, and legs on the lower ends of said rods, substantially as set forth.

3. The combination of the main mirror A, the wing-mirrors B and C, the tubes D on the back of the main mirror, the rods E in said tubes, the links J and K, the tubular legs N on the lower ends of said rods, and the screws N' in said legs passed into annular grooves O of the rods E, substantially as set forth.

In testimony that I claim the foregoing as my invention I have signed my name in presence of two subscribing witnesses.

PETER WIEDERER.

Witnesses:

OSCAR F. GUNZ,

JOHN A. STRALEY.

Defendants' Exhibit "W."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "W." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.



No. 751,526. PATENTED FEB. 9, 1904.

A. W. MANN.

MIRROR SUPPORT.

APPLICATION FILED OCT. 22, 1903.

NO MODEL.

Fig. 1.

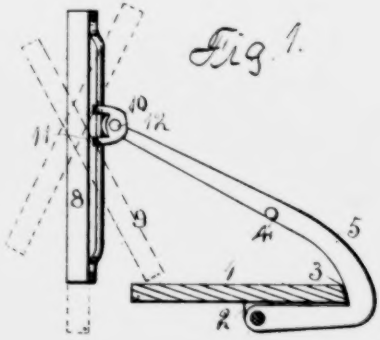


Fig. 2.

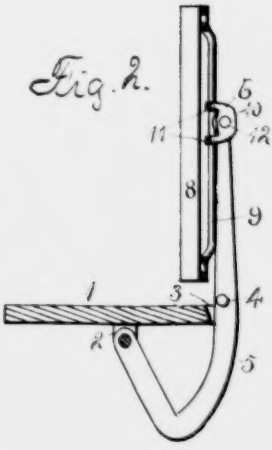


Fig. 3.

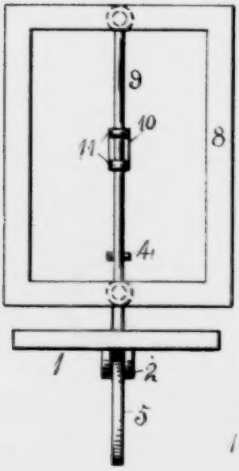


Fig. 4.

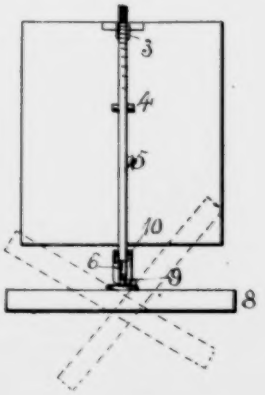


Fig. 5.

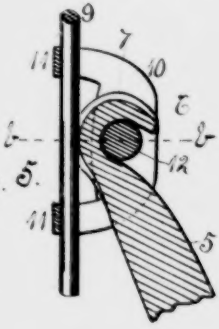
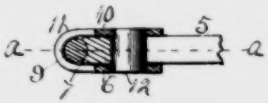
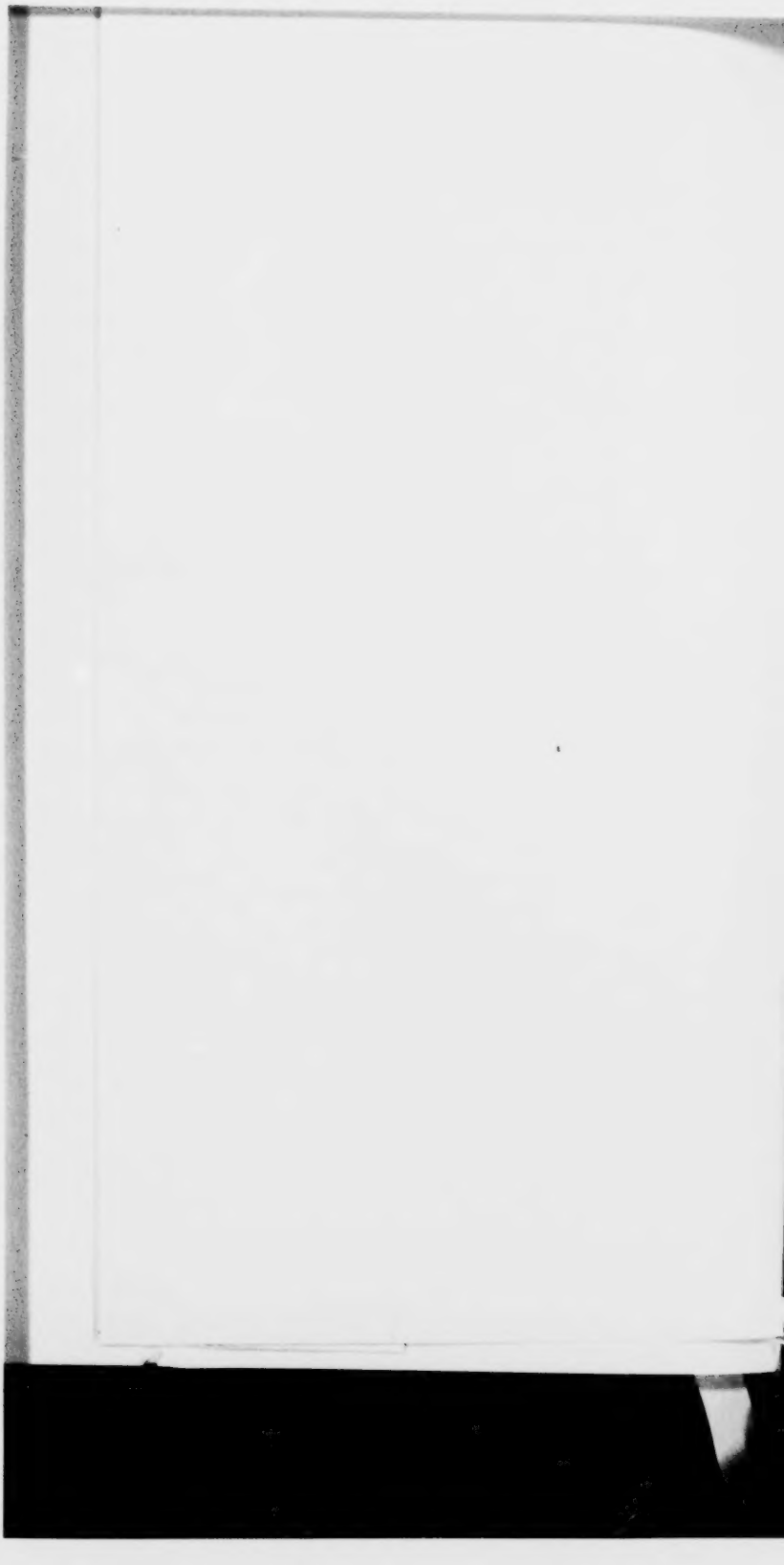


Fig. 6.



Witnesses:
A. Fehrenbach
C. Bebel.

Inventor:
Albert W. Mann.
By A. C. Bebel
Atty.



183

No. 751,526. Patented February 9, 1904.

UNITED STATES PATENT OFFICE.

ALBERT W. MANN, OF ROCKFORD, ILLINOIS, ASSIGNOR TO ROCKFORD FRAME & FIXTURE COMPANY OF ROCKFORD, ILLINOIS, A CORPORATION OF ILLINOIS.

MIRROR-SUPPORT.

SPECIFICATION forming part of Letters Patent No. 751,526, dated February 9, 1904.

Application filed October 22, 1903. Serial No. 178,080. (No model.)

To all whom it may concern:

Be it known that I, ALBERT W. MANN, a citizen of the United States, residing at Rockford, in the county of Winnebago and State of Illinois, have invented certain new and useful Improvements in Mirror-Supports, of which the following is a specification.

The object of this invention is to support a mirror in a manner that it can be raised and lowered, turned to the side, and moved to and from the person using it.

In the accompanying drawings, Figures 1 and 2 are elevations of my improvements, the table being in section. Fig. 3 is a face representation. Fig. 4 is a plan view. Fig. 5 is a section on dotted line *a*, Fig. 6. Fig. 6 is a section on dotted line *b*, Fig. 5.

To the underface of the table 1 are secured ears 2, between which is pivoted one end of an arm 5. The rear edge of the table is provided with a notch 3, through which the arm moves, and when the arm is in the position shown at Fig. 2 the studs 4 extending from it will rest against the upper surface of the table. The free end 6 of the arm is in hook form and is provided with a peripheral groove 7.

To the back of the mirror-frame 8 is secured a rod 9. This rod supports a clamp 10, bearing against it at the two points 11 and supporting a stud 12.

In placing the parts together the stud 12 is dotted lines, Fig. 1, can be tipped back or brought to the front, as shown in dotted lines, same figure, and can be turned to either side, as shown on dotted lines, Fig. 4.

The arm 5 will stand in any position between the two extremes shown in solid lines, Figs. 1 and 2.

The end of the hook is of cam shape in order that the mirror-frame may be tipped back, thereby relieving the pressure on the rod, which will allow the rod to slide in its connection with the hook.

I claim as my invention—

1. A mirror-support, comprising an arm having a pivotal connection with a stationary support and having a hooked end, a mirror-frame having a rod secured to its back, and a clamp having a pivotal connection with the hook and an adjustable connection along the rod.

2. A mirror-support, comprising an arm having a pivotal connection with a stationary support and having a hooked end provided with a peripheral groove, a mirror-frame having a rod secured to its back, and a clamp having a pivotal connection with the hook and an adjustable connection along the rod.

3. A mirror-support comprising an arm pivoted to the underface of a support and having a portion of its length a segment of a circle and its free end in hook form, a pin extending from the arm and engaging the sup-

Alexander & Dowell
Attorneys

Defendants' Exhibit "X."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "X." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

No. 783,383. PATENTED FEB. 21, 1905.

C. G. OLSON.

MIRROR SUPPORT.

APPLICATION FILED AUG. 1, 1904.

3 SHEETS—SHEET 1.

Fig. 1.

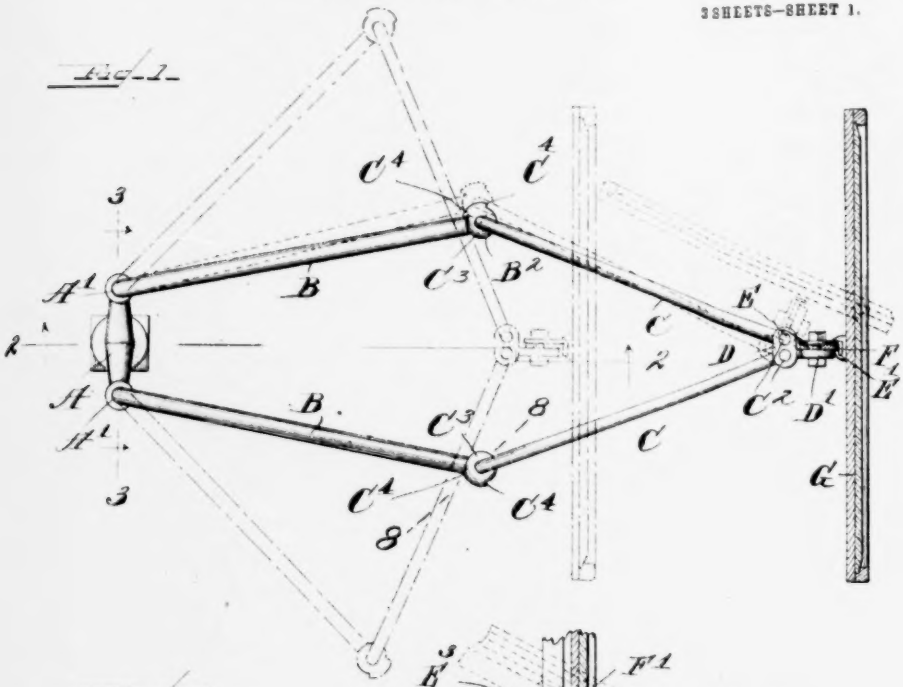
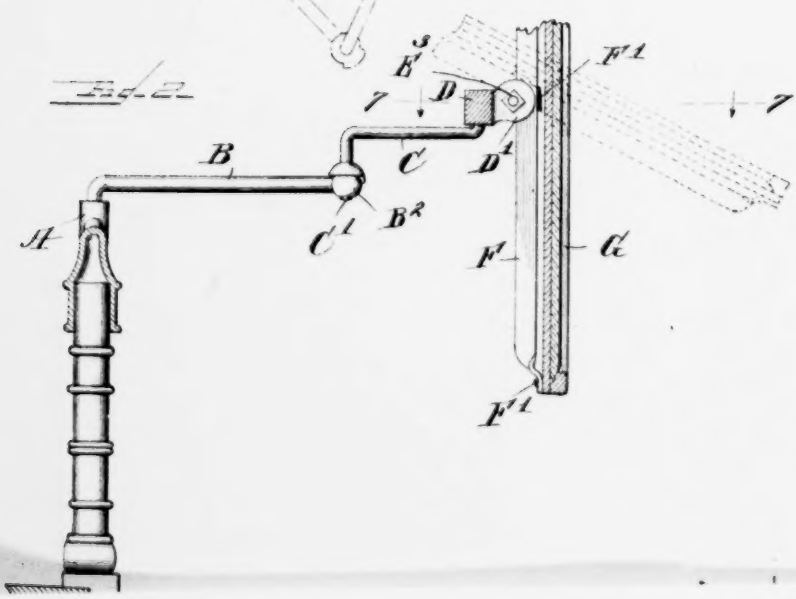


Fig. 2.





No. 783,383.

PATENTED FEB. 21, 1905.

C. G. OLSON.

MIRROR SUPPORT.

APPLICATION FILED AUG. 1, 1904.

2 SHEETS—SHEET 2.

Fig. 3.

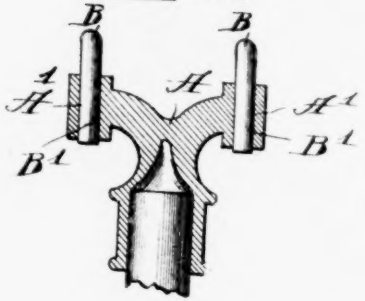


Fig. 4.

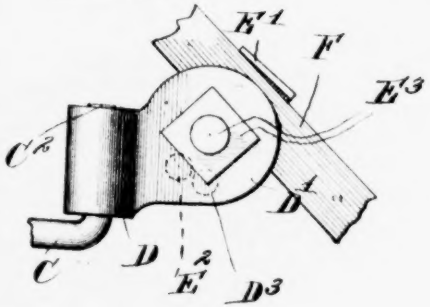


Fig. 5.

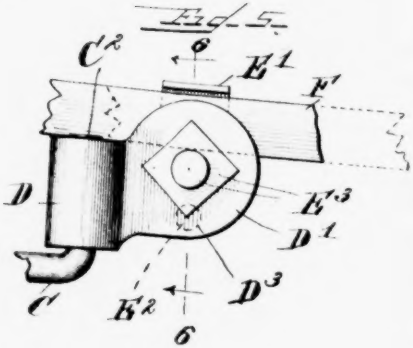


Fig. 6.

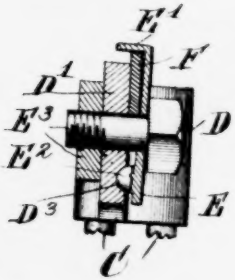


Fig. 7.

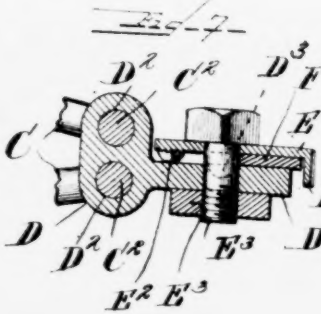
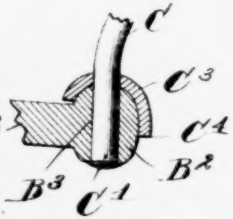


Fig. 8.



No. 783,383. Patented February 21, 1905.

UNITED STATES PATENT OFFICE.

CHARLIE G. OLSON, OF ROCKFORD, ILLINOIS.

MIRROR-SUPPORT.

SPECIFICATION forming part of Letters Patent No. 783,383, dated February 21, 1905.

Application filed August 1, 1904. Serial No. 218,970.

To all whom it may concern:

Be it known that I, CHARLIE G. OLSON, a citizen of the United States of America, residing at Rockford, in the county of Winnebago and State of Illinois, have invented certain new and useful Improvements in Mirror-Supports, of which the following is a specification.

This invention relates to a universally-adjustable support especially designed for holding a toilet-mirror.

The object of this invention is to provide a simply-constructed mirror-support so contrived that the mirror can be easily and speedily raised or lowered to a convenient level, can be swung from side to side to any desired position, and can be tilted to any required angle; and it consists of certain new and useful features of construction and combinations of parts, all as hereinafter fully described, and specifically pointed out in the claims.

Referring to the accompanying drawings, which form a part of this specification, Figure 1 is a top plan view of a mirror-support embodying my invention, the upper portion of the mirror being broken away. Fig. 2 is a section at the dotted line 2 2 in Fig. 1 of parts there shown. Fig. 3 is a section at the dotted line 3 3 in Fig. 1 of parts there shown. Fig. 4 is a detailed side elevation showing the clamping device of the mirror-support. Fig. 5 is a like view of the same with some parts thereof in different positions from those shown in Fig. 4. Fig. 6 is a section at the dotted line 6 6 in Fig. 5 of parts there shown. Fig. 7 is a section at the dotted line 7 7 in Fig. 2 of the complete mirror-support minus its mirror. Fig. 8 is a section at the dotted line 8 8 in Fig. 1 of parts there shown.

A is a base-plate.

B is a standard rising from the base-plate A and provided with a pair of laterally-projecting enlargements B'.

C is a pair of arms having their rear ends C' bent downward at right angles to their arms and inserted and pivoted into the circular openings B' in the arms B and having their outer ends C'' bent upward at right angles to their arms for a purpose to be explained hereinafter. The arms C are provided with counterpart sockets C''', inclosing the upper portions of the enlargements B' on the arms B, such sockets C''' being provided with shoulders C^4 for limiting the lateral movements of such arms C.

D is a bracket carrying the stationary member D′ of a clamping device and having two vertical sockets D'' and a countersink D''' therein and pivot-jointed through such sockets D'' to the upturned outer ends C'' of the arms C.

E is the oscillatory member of the clamping device of the support and is provided with a transverse mirror-supporting-bar-engaging lug E' and an inwardly-projecting clamping-boss E'' and pivoted to a transverse bearing E''', composed of an ordinary headed bolt and its nut on the stationary member D′ of the clamping device.

F is a mirror-supporting bar inserted between the stationary and oscillatory members D′ E of the clamping device and is adapted to be adjustably clamped thereby at any desired point between its ends and at any desired angle or inclination.

G is a mirror secured to the mirror-supporting bar F by means of screws F′ or in any other suitable manner. The dotted lines in Fig. 1 of the drawings indicate the general character, but not the full extent of the movements of which the mirror G is capable. The bracket D can be carried back to the base A. If the mirror G be tilted to a horizontal po-

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clamping-boss E^2 to travel out of its countersink D^2 onto the inner face of the part D', thereby securely and rigidly clamping the bar F to the bracket D.

What I claim as new, and desire to secure by Letters Patent, is—

1. In a mirror-support, in combination, a stationary base having two vertical sockets therein, a pair of arms, having their rear ends bent downward at right angles thereto and pivoted in the sockets in the base, and having their outer ends terminating in enlargements having vertical circular openings therein, a second pair of arms, having their rear ends bent downward at right angles thereto, and pivoted in the openings in the first pair of arms, and having their outer ends bent upward at right angles thereto, a bracket, carrying a clamping device and having two vertical sockets therein whereby such bracket is pivot-jointed to the upturned ends of the second pair of arms, and a mirror-supporting bar inserted through the clamping device and adapted to be adjustably clamped thereby at any desired angle of inclination, substantially as and for the purpose specified.

2. In a mirror-support, in combination, a stationary base having two vertical sockets therein, a pair of arms, having their rear ends bent downward at right angles thereto and pivoted in the sockets in the base and having their outer ends terminating in substantially globular enlargements having vertical central openings extending therethrough, a second pair of arms, having their rear ends bent downward at right angles thereto, and pivoted in the openings in the first pair of arms, and having their outer ends bent upward at right angles thereto, and provided with counterpart sockets inclosing the upper portions of the enlargements on the outer ends of the first pair of arms, such sockets being provided with shoulders for limiting the lateral movements of the outer pair of arms, a bracket carrying a clamping device and having two vertical sockets therein whereby such bracket is pivot-jointed to the upturned outer ends of the second pair of arms, and a mirror-supporting bar inserted between the stationary and oscillatory members of the clamping device and adapted to be adjustably clamped thereby at any desired point between its ends and at any desired angle or inclination, substantially as and for the purpose specified.

3. In a mirror-support, in combination, a stationary base, having two vertical sockets therein, a pair of arms, having their rear ends bent downward at right angles thereto and inserted into and pivoted in the sockets in the base, and having their outer ends terminating in substantially globular enlargements having vertical circular openings extending therethrough, a second pair of arms, having their rear ends bent downward at right angles thereto and inserted and pivoted into the enlargements on the first pair of arms, and having their outer ends bent upward at right angles thereto, a bracket, carrying the stationary member of a clamping device, and having two vertical sockets therein and pivot-jointed, through such sockets, to the upturned outer ends of the second pair of arms, an oscillatory member of a clamping device, provided with a transverse mirror-supporting-bar-engaging lug and an inwardly-projecting locking-boss and pivoted to a transverse bearing on the stationary member of the clamping device, and a mirror-supporting bar inserted between and adapted to be adjustably supported by the members of the clamping device, substantially as and for the purpose specified.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

CHARLIE G. OLSON.

Witnesses:
L. L. MORRISON,
NELLIE E. ENNETT.

Defendants' Exhibit "Y."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "Y." Filed 10/5/21. Chas. N. Williams, Clerk. Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.



W. T. JÓLLIFFE.

WIND SCREEN FOR MOTOR CARS AND THE LIKE.

APPLICATION FILED DEC. 17, 1910.

1,062,402.

Patented May 20, 1913.

3 SHEETS—SHEET 1.

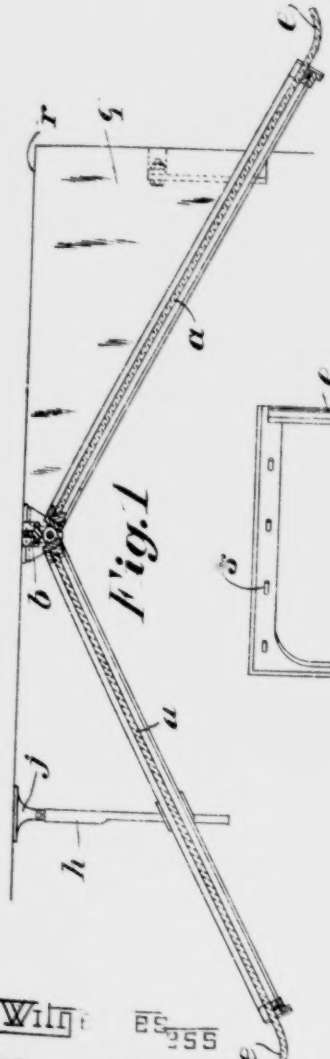


Fig. 1.

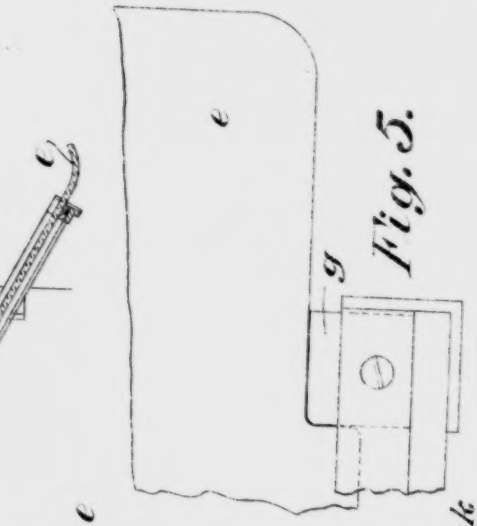


Fig. 5.

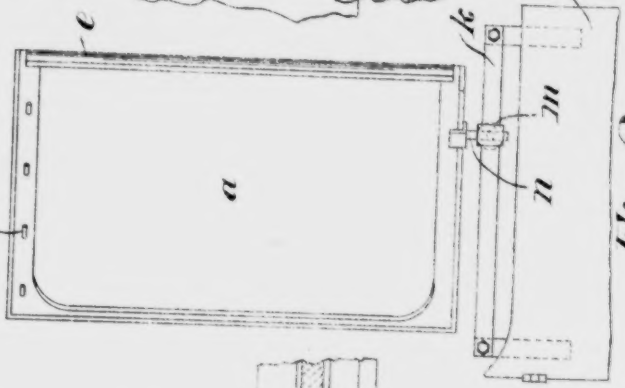


Fig. 2.



Fig. 4.

Witnesses

James A. Mumford

Inventor

William T. Jolliffe

W. T. JOLLIFFE.

WIND SCREEN FOR MOTOR CARS AND THE LIKE.

APPLICATION FILED DEC. 17, 1910.

1,062,402.

Patented May 20, 1913.

3 SHEETS—SHEET 2.

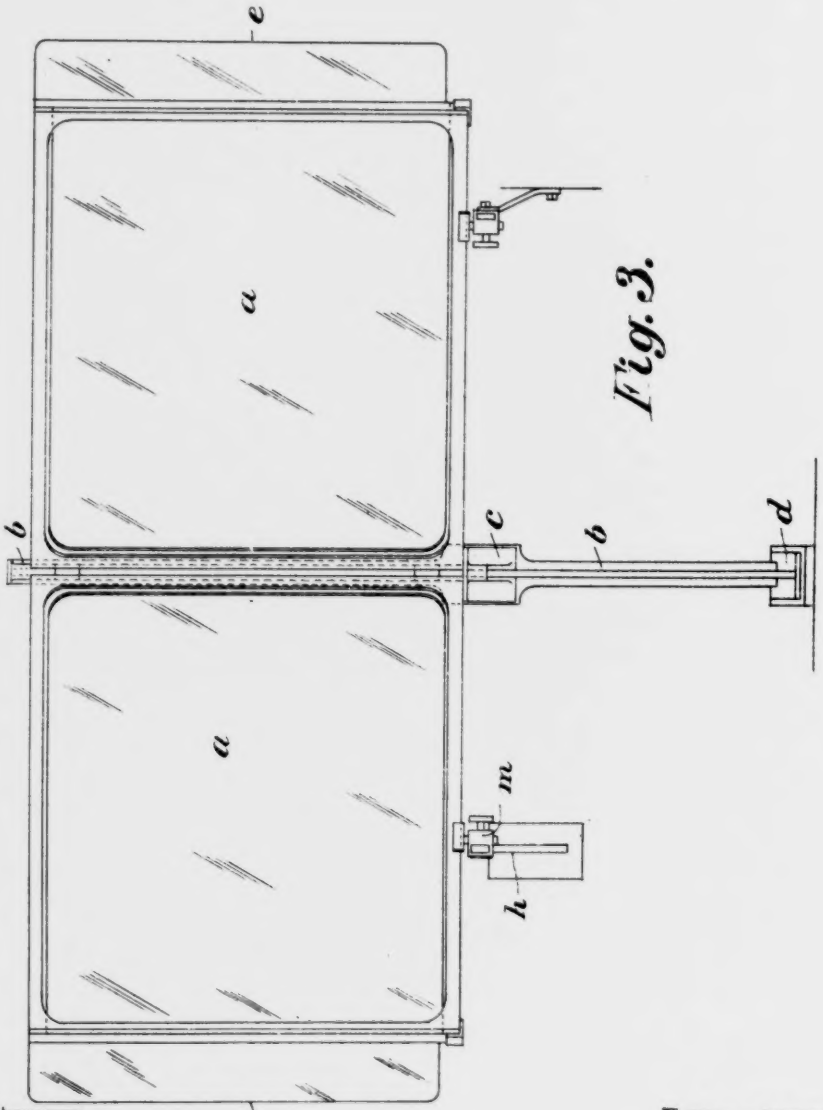


Fig. 3.

Witnesses

James P. Mansfield

L. E. West

Inventor

William T. Jolliffe

By

W. T. JOLLIFFE.

WIND SCREEN FOR MOTOR CARS AND THE LIKE.

APPLICATION FILED DEC. 17, 1910.

1,062,402.

Patented May 20, 1913.

3 SHEETS—SHEET 2.

Fig. 7.

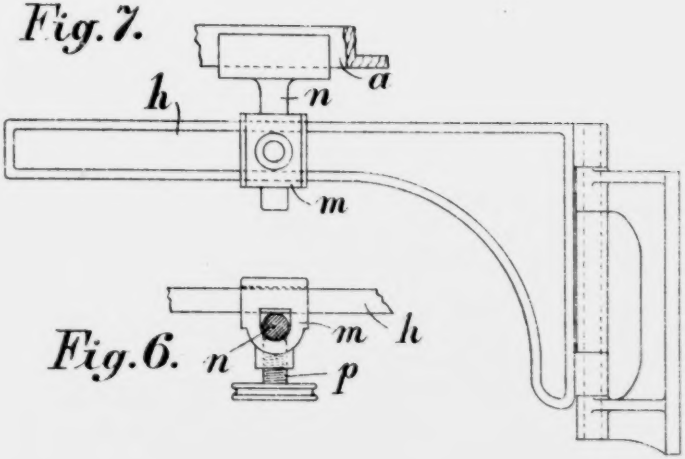


Fig. 6.

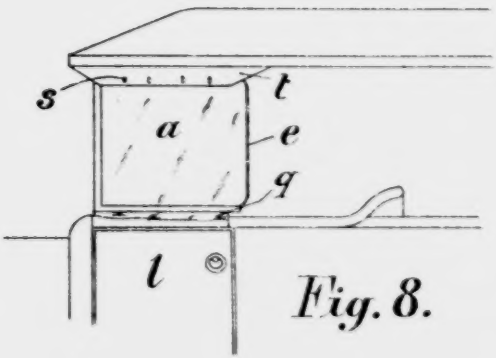


Fig. 8.

Witnesses

James R. Mansfield

L. E. Whittemore

Inventor

William T. Jolliffe

By

UNITED STATES PATENT OFFICE.

WILLIAM THOMAS JOLLIFFE, OF ROSSETT, ENGLAND.

WIND-SCREEN FOR MOTOR-CARS AND THE LIKE.

1,062,102. Specification of Letters Patent. Patented May 20, 1913.

Application filed December 17, 1910. Serial No. 597,848.

To all whom it may concern:

Be it known that I, WILLIAM THOMAS JOLLIFFE, a subject of the King of Great Britain, residing at Rossett, in the county of Denbigh, in the Principality of Wales, England, have invented certain new and useful Improvements in Wind-Screens for Motor-Cars and the Like, of which the following is a specification.

This invention relates to the type of transparent screens for motor cars and the like in which the screen consists of two wings extending laterally from a central post on which they are supported by means of hinges or otherwise and adapted to be set at an angle so as to produce but small wind resistance while deflecting the air laterally and thus shielding the occupants of the car or the like.

The invention will be described with reference to the accompanying drawings which show one embodiment of the invention applied to a motor car. It is to be understood, however, that the invention is applicable, either wholly or in part, for the purpose of protecting the occupants of vehicles other than motor cars. In these drawings:—Figure 1 is a plan view partly in section of a screen constructed in accordance with the present invention. Fig. 2 is a side elevation showing one method of supporting and angularly adjusting the outer end of one side of the screen. Fig. 3 is a front elevation of the screen. Figs. 4 to 7 show details of the structure; and Fig. 8 is a side view of part of a car fitted with a screen in accordance with this invention.

The two wings *a* are supported at the center on the upper part of the post *b* which is attached to the car at *c* and *d*. At the sides of the two wings *a*, curved extensions *e* are provided. These extensions are arranged so that their hollow faces are directed forwardly so as to throw out the air more effectually at the lateral edges of the screen and so as to prevent currents of air from striking back upon the occupants of the car and the like. If, as in the case illustrated in the accompanying drawings the sheets of glass are supported in the outer members of the frame by means of packing pieces *f* and *g* formed of rubber or like material.

The arrangement for obtaining the angular adjustment of the wing and securing them in position when adjusted consists of a bar mounted so as to swing on a vertical or approximately vertical pivot and carrying a sliding piece to which the wing is adapted to be connected by a pivotal joint. This pivotal joint also allows of relative vertical motion between the sliding piece and the wing as this latter is adjusted. A locking or clamping device is provided for the pivotal connection and the sliding piece in position on the bar when required. The bar *h* shown in Figs. 1 and 3 of the accompanying drawings and shown in detail in Figs. 6 and 7 is mounted by means of a hinge on a bracket *j* and is connected with the wing *a* in the manner above indicated and more fully described hereafter.

In order that the screen may protect the occupants of the car it will be generally necessary to place it in such a position that the outer sides of the wings extend over or in front of the doors at the sides of the car which gives access to the seats. Accordingly it is necessary when a person is entering or leaving the car to swing one of the wings forward. If the bar, on which the sliding piece above mentioned is carried, is arranged on the upper part of one of the doors, it follows that when the door is swung open the sliding piece will be moved along the bar so as to cause the wing to turn on its hinge and move into such a position that it no longer forms an obstruction to a person entering or leaving the car. This arrangement of the bar is shown in Fig. 2. In this case the bar *h* is mounted on the upper part of the door *l* so as to move therewith. Where it is desired to use the door at one side of the car only, it will be obvious that there will be no necessity

vertically and angularly when being adjusted so that it may move freely with the part on which it is mounted even if the axes about which the wing and swinging arm turn are not exactly parallel.

It is preferable to arrange the parts so that the pin is formed on or firmly attached to the wing, and the socket is formed in the sliding piece, as shown in the drawings (see particularly Figs. 6 and 7). In this form the sliding piece *m* which works on the swinging bar *h* (or *k*), receives the pin *n* which is attached to the wing *a*. For clamping the pivotal and sliding parts, a screw device may be provided as for instance the set screw *p*, which is adapted to press upon the pin *n* and move it into engagement with the bar *h* (or *k*) so as to clamp the sliding piece *m*, the bar *h* (or *k*) and the pin *n* together. It is of course necessary to provide that the socket allows for some lateral movement of the pin and that the socket at one edge intersects the slot, as shown in Fig. 6.

Instead of a screw device a part having a cam or wedge action may be provided to give the clamping pressure. The clamping action may be brought about automatically by forming the bar so that, when the sliding piece has traveled along it to the position in which it is to be secured, the form of the bar at this part brings about the clamping of the parts. For this purpose the bar may, for instance, be formed of a gradually enlarging section at this part so that it acts as a wedge in the socket in the sliding piece, or a separate wedge or cam may be mounted on the bar to engage in a socket in the sliding piece provided for this purpose.

Instead of attaching the pivotal pin or its equivalent directly to the wing it may be mounted on a second sliding piece carried on the lower bar of the wing frame and adjustable thereon so as to afford great facilities for adjustment.

Between the adjacent parts of the vehicle and the screen, flaps *q* (Fig. 1), and *t* (Fig. 8) are provided which will cover over the spaces left between the wings *a* and the dash-board *r* and the top of the car. In the drawing a flap is shown at one side only of the screen, it will be understood, however that a similar flap will be placed at the other side. These flaps may be of waterproof canvas or the like affixed to the edges of the wings *a* of the screen, and provided with suitable fastenings for attaching the flaps to the dash-board and the top of the car and over the doors or the sides of the car at each end of the front platform. The flaps may be held by straps or by studs (Figs. 2 and 8) or in any other convenient manner, which will allow the flaps to be adjusted if required when the angle of the wings of the screen is adjusted.

I declare that what I claim is:—

A wind screen for vehicles comprising a central supporting device rigidly mounted on the vehicle, a pair of lateral wings pivotally connected with said device, means for angularly adjusting and securing one of said wings, said means consisting of a bar, means for mounting said bar on a side door of the vehicle, a sliding piece on said bar, a pivotal joint connecting said sliding piece with the wing, and means for clamping the sliding piece and the pivotal joint.

In witness whereof, I have hereunto signed my name this 9 day of December 1910, in the presence of two subscribing witnesses.

WILLIAM THOMAS JOLLIFFE.

Witnesses:
ROBERT A. GILL,
RICHARD W. WILLIAMS.

Defendants' Exhibit "Z."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "Z." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

M. TISCHLER.

BRACKET FOR PIVOTALLY SUPPORTING SIGNS, MIRRORS, AND SIMILAR DEVICES.

APPLICATION FILED OCT. 19, 1910.

1,110,973.

Patented Sept. 15, 19

2 SHEETS—SHEET 1

Fig. 1.

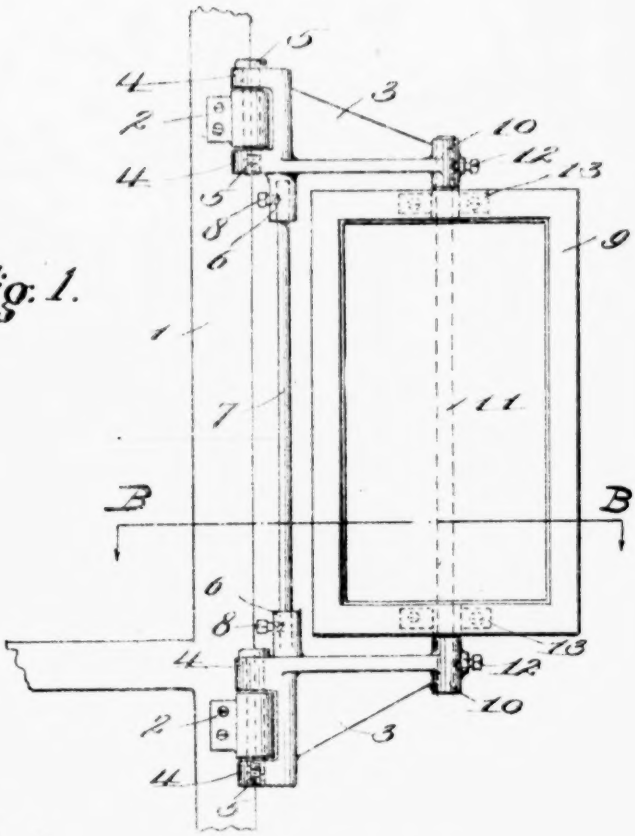


Fig. 3.

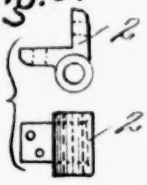
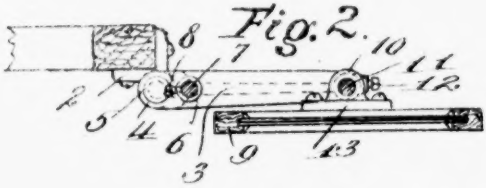


Fig. 2.



WITNESSES

INVENTOR

Moses Tischler

BY

M. TISCHLER.

BRACKET FOR PIVOTALLY SUPPORTING SIGNS, MIRRORS, AND SIMILAR DEVICES.

APPLICATION FILED OCT. 19, 1910.

1,110,973.

Patented Sept. 15, 1914.

2 SHEETS—SHEET 2.

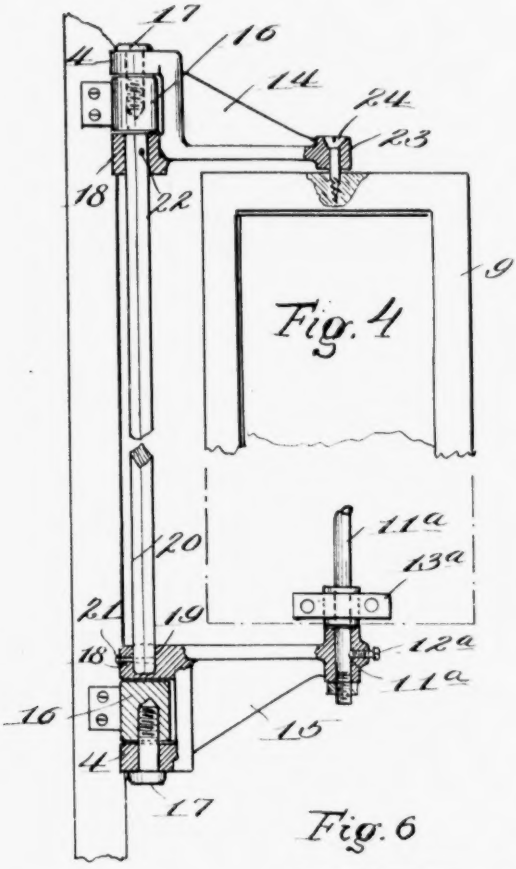


Fig. 4

Fig. 5.

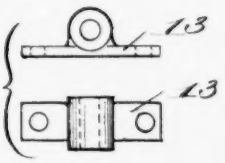
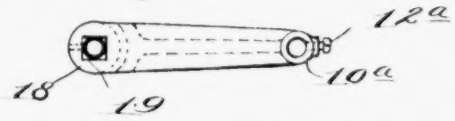


Fig. 6



UNITED STATES PATENT OFFICE.

MOSES TISCHLER, OF NEW YORK, N. Y.

BRACKET FOR PIVOTALLY SUPPORTING SIGNS, MIRRORS, AND SIMILAR DEVICES.

1,110,973. Specification of Letters Patent. Patented Sept. 15, 1914.

Application filed October 19, 1910. Serial No. 587,980.

To all whom it may concern:

Be it known that I, MOSES TISCHLER, a citizen of the United States, residing at New York, in the county of New York and State of New York, have invented new and useful Improvements in Brackets for Pivotally Supporting Signs, Mirrors, and Similar Devices, of which the following is a specification.

My present invention relates to improvements in brackets for pivotally supporting mirrors, picture frames, advertising signs and other devices, and it has for its object primarily to provide a relatively simple and inexpensive bracket of this character, the construction of which is such as to enable it to be adjusted or adapted for devices of different sizes, and in practice brackets which support the device will be rigidly connected so as to swing in unison, the brackets being mounted to swing on one axis while the device supported by the brackets may swing on its own axis.

To these and other ends, the invention consists in certain improvements, and combinations and arrangements of parts, all as will be hereinafter more fully described, the novel features being pointed out particularly in the claims at the end of the specification.

In the accompanying drawing:—Figure 1 represents in elevation a bracket constructed in accordance with one embodiment of my invention; Fig. 2 represents a section on the line B—B of Fig. 1 and looking downwardly; Fig. 3 is a collective view showing in plan and side elevation respectively one of the bearing blocks for the bracket; Fig. 4 is a view similar to Fig. 1, parts, however, being shown in section and illustrating a modified form of the invention; Fig. 5 is a collective view showing in plan and side elevation respectively the bearings adapted to be attached to the device carried by the bracket; and Fig. 6 is a top plan view of the lower bracket member.

Similar parts are designated by the same reference characters in the several views.

In that embodiment of the invention shown in Figs. 1 to 3 inclusive, the bracket is shown applied to a frame 1 which may be vertically alined apertures. The swinging bracket is composed of a pair of similar but reversely arranged upper and lower bracket members 3 each having a pair of lugs 4 which form forks adapted to occupy a position above and below the respective bearing block 2, and a bolt 5 is passed through one of the lugs 4 and is threaded into the other lug of the bracket member, its intermediate portion being journaled in the vertical aperture in the respective bearing block. As the bolts 5 are in alinement, the two bracket members 3 will swing about the same vertical axis. The bracket members 3 are provided with sockets 6 which are directed toward one another and a bar 7 is placed in position so that its ends rest in the respective sockets, set-screws 8 or their equivalents being used for rigidly securing the bar to the respective bracket members, the bar 7 forming an operative connection between the members whereby both members will turn about the same vertical axis in unison. It is obvious that the construction is such that the bracket members and their bearing blocks may be spaced at any suitable distance to conform to the dimensions of the device supported by the bracket and the connecting bar 7 may be made of a length to conform to the distance between the bracket members.

The device 9 which may be a picture frame, mirror, advertising sign or the like is mounted between and sustained by the bracket in such a way that the device may revolve on a vertical axis and any suitable means may be provided for pivotally supporting this device 9 upon the brackets. I prefer, however, to employ the structure substantially as illustrated in Figs. 1 and 2, the outer ends of the bracket members in this form of the invention being provided with vertical sockets 10 which receive a vertical bar or spindle 11, the ends of this bar or spindle being rigidly attached to the respective bracket members by the set-screws 12 or their equivalents and the device 9 is mounted to revolve on the bar or spindle 11 by means of the bearings 13 which are journaled on the bar 11 and may be attached by screws as shown or by other suitable means

hereinbefore described and they coöperate with a pair of bearing blocks 16 suitably secured to an appropriate supporting frame. In this instance, however, the bracket members are connected to the respective bearing blocks by means of screws 17 which are tapped into the upper portion of the upper bracket and the lower portion of the lower bracket, respectively. The forks 18 of the bracket members opposed to the forks thereof which receive the screws 17 are provided at points in alinement with the screws 17 with angular sockets 19, and these sockets are adapted to receive the respective ends of a connecting bar 20 which has an angular cross-section corresponding to the shape of the sockets. Pins 21 may be inserted into the forks 18 and caused to engage in transverse apertures 22 formed in the respective ends of the bar 20 for the purpose of locking the bar 20 to the respective brackets. This bar 20 corresponds to the bar 7 in the former construction and forms an operative connection between the bracket members which will insure the turning thereof in unison, the bracket members being rigidly connected at all times by this bar. In this form of the invention, the lower bracket member 15 is provided with means similar to that shown in Fig. 1 for revolubly supporting the device, that is to say, it has a vertical socket 10^a formed on its outer end to receive the vertical bar or spindle 11^a, this bar or spindle is secured in the socket 10^a by the set-screw 12^a, and the device is journaled on the vertical bar or spindle 11^a by the bearing 13^a. The upper bracket member 14, however, is adapted to be attached to the device 9 in a somewhat different manner, its outer end being formed with a vertical bore 23 which is countersunk at its upper end, and an ordinary wood screw may be passed through this bore and engaged in the top of the frame forming part of the device 9.

I claim as my invention:

1. A swinging support for signs, mirrors and similar devices comprising, in combination, a pair of bracket members, each bracket member embodying as a unit forks, a bearing block between said forks, and a pivot pin turnably connecting said forks and b ing block, said bracket members being formed with sockets, the socket of bracket member being opposed to and alinement with the socket of the o bracket member, a rod independent of pivot pins for said bracket members having its ends seated and secured rig but detachably in the sockets of the res tive bracket members and forming a r connection between said members wh spaces them axially and insures turning said members in unison about their res tive pivot pins, and a device supported the outer ends of and revolubly mounted tween said bracket members on an axis allel to the pivot pins of the latter.

2. A bracket of the class described c prising, in combination, a pair of ar hinges pivotally supporting said arms, hinge pintles being in alinement, each having adjacent to the respective hinge tle a socket the opening in which faces other arm, a spacing bar having its e seated and secured rigidly in said soc of the respective arms, a rod extending tween and rigidly connecting the outer e of said arms, and an object pivotally mou ed on said rod and turnable about the s as an axis.

3. A bracket of the class described c prising, in combination, a pair of ar hinges pivotally supporting said arms, a arm having adjacent to its respective hi a socket the opening in which faces the ot arm and the outer ends of the arms be formed with alined apertures, a pair of p allel rods, one having its ends seated secured rigidly in said sockets, and other rod having its ends secured rigidly the alined apertures at the ends of the ar and an object arranged between the a and pivoted to turn on one of said rods an axis.

In testimony whereof I have hereunto my hand in presence of two subscribing w nesses.

MOSES TISCHLER

Witnesses:

CHARLES DE LWRACSOVICS,

LOUIS HARRIS.

Defendants' Exhibit "Z-1."

[Endorsed]: No. E-86. Keller vs. Adams-Campbell. Defts. Exhibit "Z (1)." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.



J. A. LA BONTE.

WIND SHIELD.

APPLICATION FILED JUNE 13, 1914.

1,184,652. Patented May 23, 1916.

Fig. 1.

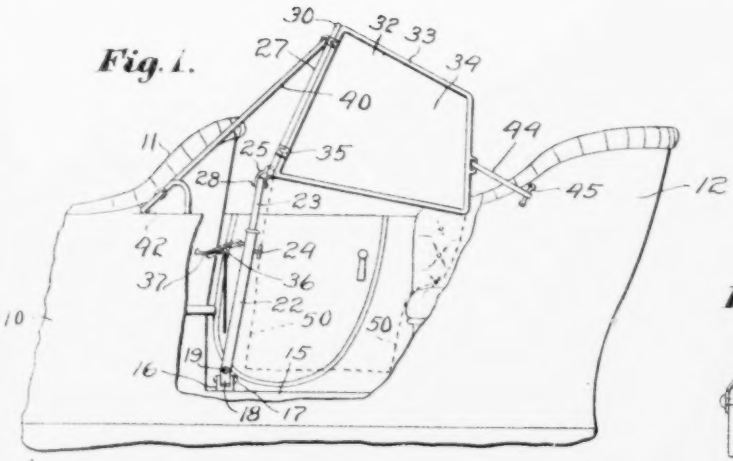


Fig. 5.

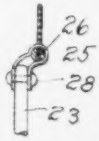


Fig. 2.

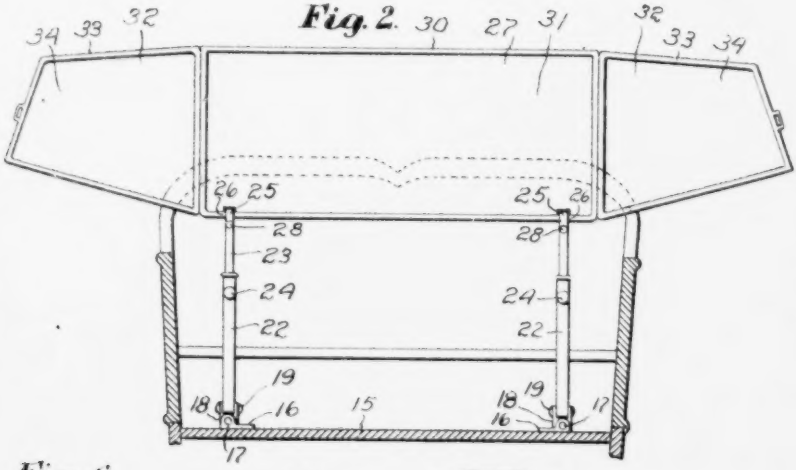


Fig. 6.

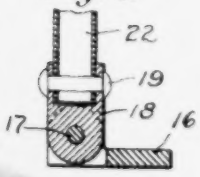
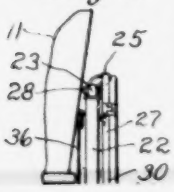


Fig. 3.



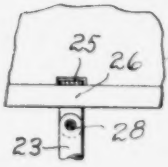


Fig. 4.

UNITED STATES PATENT OFFICE.

JOSEPH A. LA BONTE, OF CAMBRIDGE, MASSACHUSETTS.

WIND-SHIELD.

1,184,652. Specification of Letters Patent. Patented May 23, 1916.

Application filed June 13, 1914. Serial No. 844,921.

To all whom it may concern:

Be it known that I, JOSEPH A. LA BONTE, a citizen of the United States, and a resident of Cambridge, county of Middlesex, State of Massachusetts, have invented an Improvement in Wind-Shields, of which the following description, in connection with the accompanying drawing, is a specification, like characters on the drawing representing like parts.

This invention relates to wind shields and pertains more particularly to wind shields to be located to the rear of the front seat of the tonneau of an automobile and capable of being adjusted toward and from the rear seats to protect the occupants therein.

In order to illustrate my invention I have shown in the accompanying drawing one embodiment thereof, wherein:

Figure 1 is a side elevation of an automobile tonneau with a part of the side broken away, to show a side elevation of my invention and the application thereof. Fig. 2 is a view transverse to Fig. 1 with the side wings extended in the same plane as that of the central panel of the wind shield. Fig. 3 is a detail showing the wind shield in its folded position. Figs. 4, 5 and 6 are details of pivots or hinges to be hereinafter described.

The terms employed herein are used in the generic and description sense and not primarily for the purpose of imposing limitations upon my invention. Limitations of my invention will be pointed out in the appended claim.

In the drawing 10 represents the tonneau body of an automobile having the usual front or driver's seat 11 and the rear or passenger seats 12.

Usually the occupants of the front or driver's seat are fully protected by a wind shield erected upon the dash forming a part of the body, while the occupants of the rear or passenger seats are afforded little or no protection against the wind or dirt blown in the faces of the passengers. Therefore between the front seat 11 and the rear seat 12 I preferably provide a wind shield that can be adjusted up, down sidewise or at any inclination desired

end of an upwardly extending tubular member 22.

Slidable within the tubular member 22 is a rod 23 adapted to be clamped in any desired vertical position by means of the set screw 24. At the top of the rod 23 I preferably provide a strap 25 encircling a rounded portion 26 on the central panel 27 of the wind shield. The said strap 25 extends downward along the sides of the rod 23 and is provided with a pivot pin 28 at right angles to the bearing surface 26. Therefore the tubular member 22 and rod 23 form telescopic means for raising and lowering the central panel 27 and at the same time the center panel can be turned in any angular position with respect to the rod 23 or to the hinge members 16 thereby providing a universal joint construction at both the upper and lower ends of the wind shield support.

The center panel 27 comprises the usual frame 30 and glass or transparent celluloid member 31 so that the occupants of the tonneau seat 12 may be protected from the wind and from dirt and at the same time the roadway and view is unobstructed. At each side of the center panel 27 I preferably provide side wings 32—32 each comprising a frame 33 and a transparent member 34 hinged at 35 to the central panel 27. This construction provides deflecting panels or wings to practically inclose the occupants of the tonneau seat on three sides thereby forming a most effective shield or guard. Tie straps 36 extending from the sleeves 22 to rings 37 or other suitable anchoring construction upon the front or driver seat 11 provide means for securing the said sleeve and the rod 23 in the desired angular position. These said tie straps may be adjusted so as to permit the said sleeve on the said rod to be adjusted to any angle with respect to the passengers' seat 12. Tie straps 40 secured to the central panel 27 near the top thereof at each end are likewise strapped to the rings 42 or the like and permit the said central panel and said wings to be adjusted to any desired degree of inclination with respect to the tubular members 22. The said

The straps 36, 40 and 44 may be of any suitable nature best adapted for the purpose and are held to the respective anchor means by means of buckles or snap hooks or any other suitable means to permit said tie straps to be quickly attached and detached and at the same time allow for adjustment in the length of the strap. Such features as these are well known in the art and further description or illustration is unnecessary to an understanding of such devices except that broadly any desired form of tie strap and connections may be employed.

If desired depending flexible curtains shown in the dotted lines 50 may be secured to the central panel 27 and to the side wings 32—32 so that if the entire wind shield is adjusted closely to the occupants of the passenger seat said curtain can be extended down over the lower portion of the body to keep dust and dirt from the clothing.

By means of the telescopic construction consisting of the sleeve 22 and the rod 23 the entire wind shield can be adjusted to such height as to permit the passengers to look over the top of the shield. In addition to this the universal joint or hinged support construction for the wind shield, one side thereof can be lowered or raised above the level of the other side so that a shorter or taller person or that side will not be obliged to look through the wind shield while a companion may look over the top edge.

Heretofore wind shields have not been capable of having the top edge thereof adjustable from the horizontal position. Therefore this invention provides a very efficient means to adjust the wind shield to any degree of inclination and permit the top edge thereof to be adjusted out of the horizontal or to any degree of inclination. In other words the wind shield may be brought up close to the occupants of the tonneau seat and be so inclined as to project the wind over the passenger's heads by varying the degree of inclination and at the same time the top edge thereof may be so adjusted to permit persons of different heights to obtain a clear view of the roadway over the top of the wind shield. It will be noted also that there are no rods or other rigid parts secured to the seat 11 and projecting straight toward the bodies of the passengers on the rear seat 12. Such construction presents a source of danger to the occupants of the said seat 12 in that the sudden stopping of the car frequently impels such persons forward and there is great danger of such projections puncturing the body. Therefore the supports for this wind shield are so spaced that there is very little danger parts and in the case of the sudden stopping of the car for any reason whatsoever, the occupants of the rear seat will be inclosed in a guard frame that will produce no greater injuries than bruises or abrasions upon contacting therewith.

By using snap hooks on the ends of the tie straps 44 the occupants of the tonneau seat have merely to unhook such snap hooks from the rings 45 and swing the entire wind shield forward out of the way in order to get out of or into the tonneau.

When it is not desired to use the wind shield the side wings can be folded inwardly against the frame 30 and by releasing the tie straps 40 the entire wind shield can be folded inwardly and downwardly behind the seat 11. By releasing the set screws 24 the wind shield can be then lowered so as to present but very little obstruction within the tonneau.

No special fitting or cutting of the tonneau body is necessary by the use of my invention as the main portions of the wind shield supports are out of sight and are only secured to the floor of the car. The tie straps, etc., may be so arranged that they will button to other projections existing upon the body of the tonneau for the purpose of attaching curtains or a canopy top thereto.

By means of this invention the application thereof is not confined solely to its use on automobiles but it may be used with equal effect when placed in motor boats or any other type of vehicles or carriers.

I have described herein one embodiment of my invention; but it is to be understood that the latter is not essentially limited to the specific details of construction and organization of said embodiment, since the same may be varied without departing from the proper scope of the claim.

I claim:

In a wind shield of the character described, a central panel, side wings pivoted thereto, a pair of independent supporting members one at each end of said central panel and adapted to be adjusted one independently of the other each being capable of adjustment to any inclination both longitudinally and transversely, and independent members secured to the top of the central panel and adapted to adjust the angle of the same relative to the said supports.

In testimony whereof, I have signed my name to this specification, in the presence of two subscribing witnesses.

JOSEPH A. LA BONTE.

Witnesses:

M. CID E. ORGAN.

[illegible]

Defendants' Exhibit "Z–2."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "Z (2)." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

A. C. FREEMAN, Jr.

GLARE SHIELD FOR AUTOMOBILES.

APPLICATION FILED SEPT. 12, 1916.

1,225,608. Patented May 8, 1917.

Fig. 1.

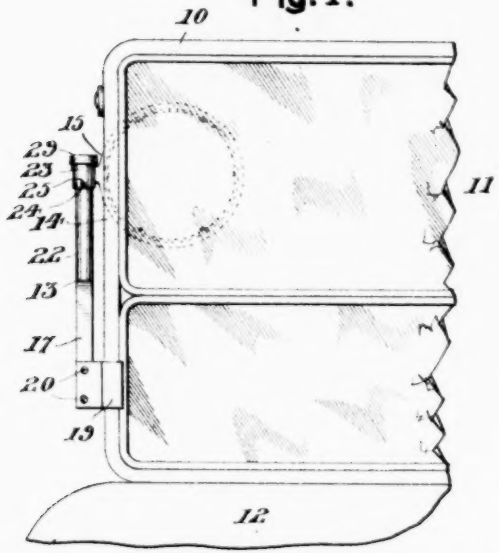


Fig. 2.

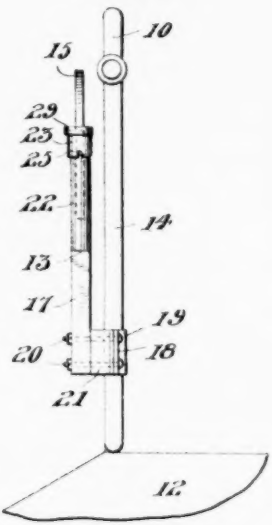


Fig. 3.

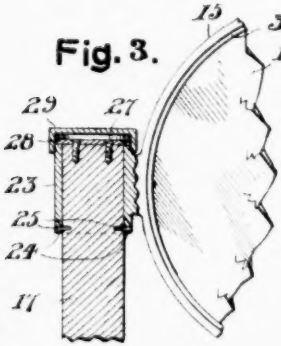


Fig. 8.



Fig. 7.

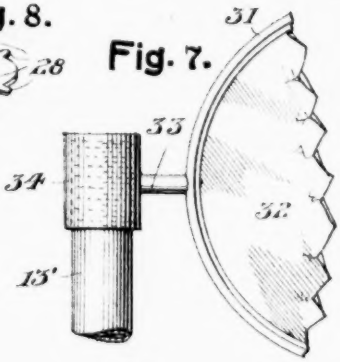


Fig. 5.

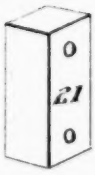
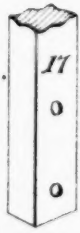


Fig. 6.



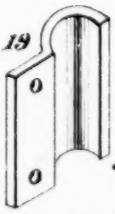


Fig. 4.

Inventor,

A. C. Freeman,

By

T. R. Tygart.

Attorney.

UNITED STATES PATENT OFFICE.

ARTHUR C. FREEMAN, JR., OF NORFOLK, VIRGINIA.

GLARE-SHIELD FOR AUTOMOBILES.

1,225,608. Specification of Letters Patent. Patented May 8, 1917.

Application filed September 12, 1916. Serial No. 119,761.

To all whom it may concern:

Be it known that I, ARTHUR C. FREEMAN, Jr., a citizen of the United States, residing at Norfolk, in the county of Norfolk and State of Virginia, have invented certain new and useful Improvements in Glare-Shields for Automobiles, of which the following is a specification.

This invention relates to certain new and useful improvements in glare shields for automobiles.

The primary object of the invention is the provision of a device that is easy and inexpensive to manufacture adapted as an attachment for automobiles for preventing the driver thereof from being affected by the blinding headlights of other machines.

A further object of the invention is the provision of an auxiliary shield of cloudy glass readily mounted upon the wind-shield of an automobile in a position for viewing any dazzling light such as those of automobile head-lights or search-lights.

It is well known that the usual construction of head-lights upon vehicles have caused many accidents by blinding and dazzling the eyes of the drivers of other vehicles and the present device is designed for preventing the same by an appliance attached to the wind-shield and through which an undazzled vision may be readily obtained by the driver by slightly shifting the position of his head while looking through the usual wind-shield.

In the drawing forming a part of this application and in which like designating characters refer to corresponding parts throughout the several views:—

Figure 1 is a rear elevation of a portion of the wind-shield and dash-board of an automobile with the present device attached to the wind-shield.

Fig. 2 is a side elevation thereof.

Fig. 3 is an enlarged sectional view through the upper portion of the device with the viewing member broken away.

Fig. 4 is a perspective view of one of the clamp members detached.

Fig. 5 is a perspective view of a filler block.

Fig. 6 is a perspective view of the lower portion of the supporting rod.

Fig. 7 is a view similar to Fig. 3 shown [illegible] illustrating a modified form of

Fig. 8 is a perspective view of the resilient member detached.

Referring more in detail to the drawing, it will be understood that the present glare preventing shield is designed as an attachment for any convenient portion of a vehicle, the same being here illustrated in connection with the frame 10 of the wind-shield 11 of an automobile 12.

The device broadly consists of a mounting rod 13 removably attached to the side member 14 of the wind-shield frame and having a mount or ring 15 carried adjacent the top thereof for suitably positioning a shield 16. The shield 16 is preferably formed of cloudy glass functioning similarly to a smoked glass in preventing the passage of the direct rays of light therethrough but being sufficiently transparent to allow visual access through the same.

The rod 13 has a squared lower portion 17 and is attachable to the wind-shield member 14 by means of a two-part clamp 18, each portion being of the form illustrated at 19. The clamp members embracing the side member 14 are secured to the rod end 17 preferably by means of bolts 20 while one or more spacing positioning blocks 21 of desired thickness are arranged between the clamp 18 and the said rod. By this arrangement, the rod 13 may be off-set a desired distance at either side of the wind-shield 11 although the same is preferably positioned as shown in Figs. 1 and 2 of the drawing in advance thereof.

The upper cylindrical portion 22 of the rod 13 accommodates the sleeve or carrying member 23 attached to the mounting ring 15 journaled upon the said rod, four notches 24 being arranged in the lower end of the sleeve 23 positioned ninety degrees apart and adapted to receive the four pins 25 therein. The said pin radially projects at distances of ninety degrees apart from the rod portion 22 whereby the shield mount 15 may be positioned at any of the four adjustments desired.

A resilient washer 26 is mounted upon the upper end of the rod 13 by means of one or more screws 27 and is provided with radially projecting resilient fingers 28 projecting over the upper edge of the sleeve 23. The resiliency of the washer or disk 26 and its fingers allow the sleeve 23 to be moved

pins 25 allowing the sleeve and glare shield to be given a quarter turn and then returned to its locked position. The depth of the said slots and diameter of the said pins being limited to allow the resilient member 26 to perform the above-named functions, the device is readily adjusted when desired without releasing any screws or other members. A cap 29 may be provided for overlying the washer 26 being herein illustrated of cap-form screw-threaded exteriorly upon the upper end of the sleeve 23. It will be evident that the rod 13 may be of any form desired which is also true of the clamp 18, the said rod being either tubular or of solid formation. The employment of two screws 27 insures the washer 26 from relative rotation.

The shield 16 is retained in the ring 15 by means of a band 30 and such mounting band and shield may be of any form desired such as oval, square, or circular as herein shown while any semi-transparent material such as pyroxylin may be employed if desired. It will be also understood that the present shield may be rigidly fixed to the mounting rod 13 as shown in Fig. 7 of the drawing and in which the mount 31 for the shield 32 is maintained in spaced relation to the rod 13', here shown as tubular by means of a horizontal arm 33 carried by a mounting cap 34 screw-threaded upon the upper free end of the said rod.

While the form of the invention herein shown and described is believed to be preferable it will be understood that changes may be made therein aside from those herein enumerated without departing from the spirit of the invention, a different form of resilient member being substituted for the washer 26 if desired or the same entirely dispensed with.

What I claim as new is:—

1. A device of the class described comprising a mounting rod, an attaching clamp carried by the said rod, projecting pins at one end of the said rod, a carrying member journaled upon the said rod having receiving notches adapted for adjustably seating over the said pins, a resilient washer having radially projecting fingers overlying the free end of the said carrying member, and an anti-glare shield member carried by the said carrying member.

2. A device of the class described comprising a supporting rod having one end portion thereof rectangular and the other cylindrical in cross-section, a mounting clamp attached to the rectangular portion of the said rod, adjustable spacing means between the said clamp and rod, a carrying member journaled upon the cylindrical portion of the rod having slots in its lower edge, projecting pins carried by the said rod over which the said slots are normally seated, a resilient washer non-rotatably mounted upon the free end of the said cylindrical rod portion having radial resilient fingers normally overlying the upper end of the said carrying member in contact therewith, a cap threaded upon the upper end of the said carrying member overlying the said washer, and an anti-glare member carried by the said carrying member.

In testimony whereof I affix my signature.

ARTHUR C. FREEMAN, Jr.

Defendants' Exhibit "Z–3."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "Z (3)." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

J. O. HOFBAUER.

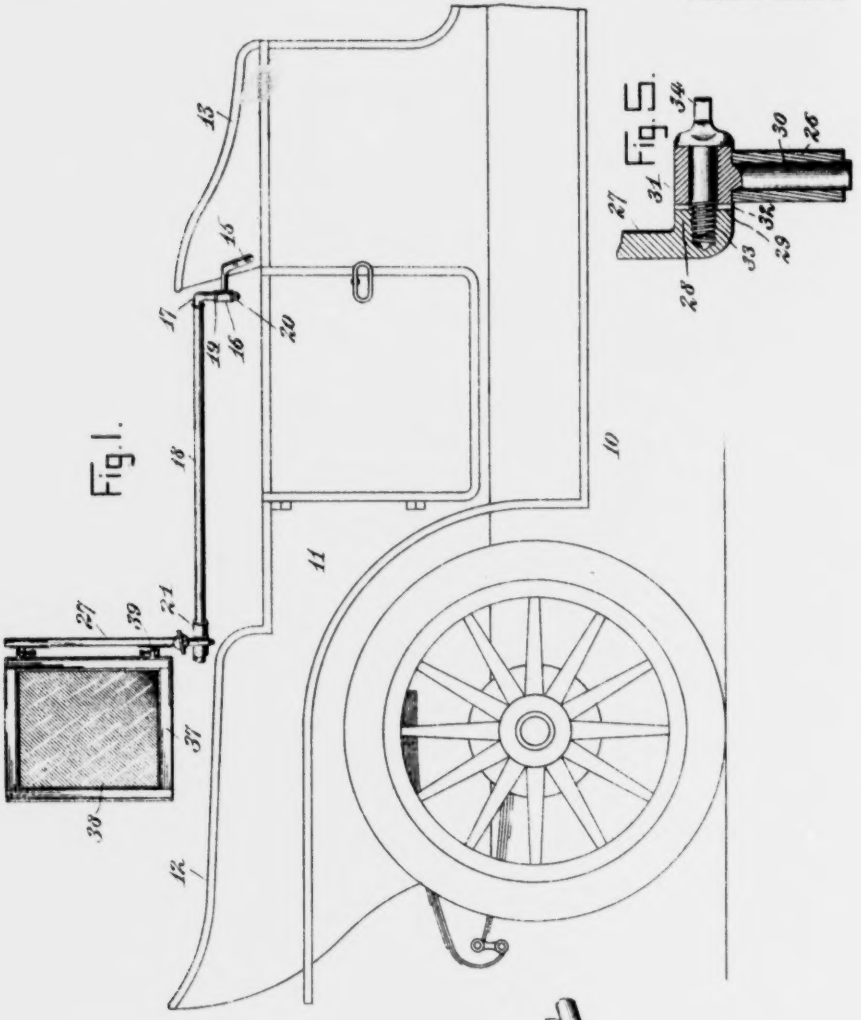
WIND SHIELD.

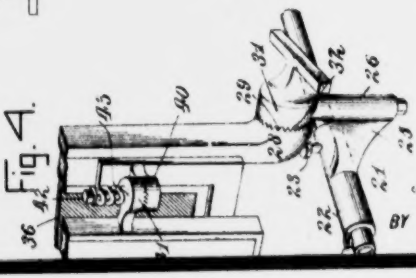
APPLICATION FILED FEB. 10, 1911.

1,018,973.

Patented Feb. 27, 1912.

2 SHEETS—SHEET 1.





WITNESSES

E. H. Reichenbach.

John L. Buchanan.

INVENTOR

John O. Hofbauer.

BY Munn & Co.

J. O. HOFBAUER.

WIND SHIELD.

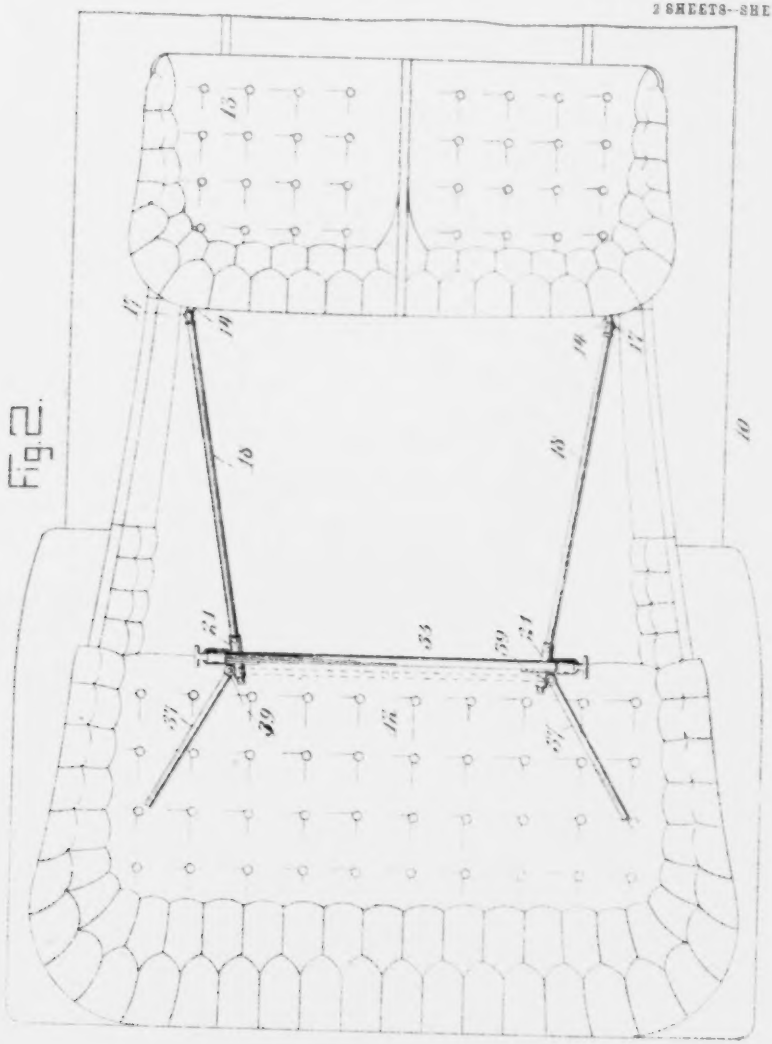
APPLICATION FILED FEB. 10, 1911.

1,018,973.

Patented Feb. 27, 1912.

2 SHEETS—SHEET 2.

Fig. 2.





WITNESSES

INVENTOR

John O Hofbauer

UNITED STATES PATENT OFFICE.

JOHN O. HOFBAUER, OF NEW YORK, N. Y.

WIND-SHIELD.

1,018,973. Specification of Letters Patent. Patented Feb. 27, 1912.

Application filed February 10, 1911. Serial No. 607,766.

To all whom it may concern:

Be it known that I, JOHN O. HOFBAUER, a citizen of the United States, and a resident of the city of New York, borough of Manhattan, in the county and State of New York, have invented new and useful Improvements in Wind-Shields, of which the following is a full, clear, and exact description.

This invention relates to wind shields for automobiles and other vehicles, and has reference more particularly to the combination with a vehicle having a front seat and a back seat, of a wind shield mounted adjacent to the front seat, and movable into an operative position relative to the rear seat, the wind shield being movable into an inoperative position toward the front seat.

The object of the invention is to provide a simple, strong and durable wind shield for use with motor or other vehicles, which serves to protect the occupants of the rear seat of the vehicle against wind and dust, which can be folded into compact form adjacent to the front seat of the vehicle, so that it is out of the way, and cannot hinder the ingress or egress of the passengers, which can be arranged in a plurality of adjustments, which can be easily and quickly manipulated, and which does not detract from the appearance of the vehicle.

The invention consists in the construction and combination of parts to be more fully described hereinafter and particularly set forth in the claims.

Reference is to be had to the accompanying drawings forming a part of this specification, in which similar characters of reference indicate corresponding parts in all the views, and in which—

Figure 1 is a side elevation of an automobile having an embodiment of my invention applied thereto; Fig. 2 is a plan view of the body of an automobile, showing the wind shield in operative position; Fig. 3 is a plan view of the rear portion of the front seat of the vehicle, showing the wind shield folded against the seat, in an inoperative position; Fig. 4 is an enlarged, fragmentary, perspective view, showing certain of the details of construction of the wind shield; and Fig. 5 is an enlarged, fragmentary section, showing certain of the details of construction, particularly designed for use at the back seat of the tonneau or body of an automobile or like vehicle. Wind shields for the front seats of automobiles are commonly employed today, but these wind shields afford practically no protection to the occupants of the rear seats, as the wind is deflected over, and passes beyond the front wind shields, and blows directly against the occupants of the rear seats. My wind shield, however, is so constructed that it can be positioned directly in front of the occupants of the rear seats of an automobile and thus serves to protect them effectively, against wind, dust, rain and the like.

Certain of the details of construction, shown for example, herewith, form no part of the invention, and can be varied in accordance with individual preference and special conditions, without deviating from the essence of the invention as defined in the appended claims.

Referring more particularly to the drawings, I have shown for example, herewith, an automobile 10, having a body 11 in which is located the rear seat 12, behind the front seat 13, in the usual manner. At the rear of the front seat, near the ends thereof, are mounted L-shaped brackets 14, secured in place by means of screws 15, or in any other suitable manner. Each bracket has at the end, a substantially vertical sleeve 16, in which is pivotally mounted the downwardly disposed end 17 of a supporting rod 18. The end 17 has a retaining flange or collar 19, and at the extremity, a securing nut 20. The supporting rods can swing freely, in horizontal planes, into position against the back of the front seat, but extending outwardly therefrom, toward the rear seat. Upon each of the supports or rods is adjustably mounted a slide 21, comprising a sleeve 22 having a set-screw 23, by means of which it can be clamped securely upon the rod at any point thereof. At the end of each rod is a screw or stud 24, constituting a stop, to prevent the slide from being displaced from the rod. Rigid with each sleeve 22 is a laterally extended arm 25 having at the end a vertically disposed, tubular extension 26. A supporting arm or bar 27 is associated with each slide, having

part 31 provided with teeth or serrations 32 corresponding to those of the arms 27. A holding screw 33 is received in threaded openings of the part 31, and the end 28 of the arm, and has a head 34 constituting a grip, by means of which it can be manipulated.

Between the arms 27 is secured in any suitable manner, a frame 35 having glass or other transparent material 36 therein, and constituting the main shield of the device. When the parts are extended, the main shield is positioned directly in front of, and preferably centrally disposed with respect to the rear seat, as is shown most clearly in Fig. 2. At each side of the main shield are positioned auxiliary or lateral shields consisting of suitable frames 37 having glass or other transparent material 38 mounted therein. The frames of the auxiliary shields are secured to the frame of the main shield, by means of hinges 39. These consist of hinge members 40 and 41 having serrated engaging surfaces, and pivotally connected by means of a bolt 42. A spring 43 tends to hold together the members of each hinge. These hinges permit the auxiliary shields to be positioned in any desired angular relation with respect to the main shield and to be held in such positions.

When the wind shield is in an operative position, the main shield is positioned in front of the rear seat, and the auxiliary or lateral shields are disposed at the sides, as desired. When the wind shield is not required, the set-screws 23 are loosened, so that the slides can move along the supports 18. One of these is then folded inwardly against the front seat, and the other is subsequently folded inwardly, as is shown in Fig. 3. This positions the main shield adjacent to the back of the front seat. The auxiliary shields are then folded inwardly against the main shield. The entire device thus requires very little room when not in use.

Having thus described my invention, I claim as new, and desire to secure by Letters Patent:

1. In combination, a pair of relatively movable rods, a fixed, pivotal support for each of said rods, sleeves slidably mounted upon said rods and movable longitudinally thereof, a wind shield, and means for pivotally and adjustably mounting said wind shield upon said sleeves, the distance between said fixed supports exceeding the length of said wind shield.

2. In combination, a pair of independently and relatively movable rods, a fixed pivot support for each of said rods, whereby the same can swing in a horizontal plane, a sleeve slidably mounted upon each of said rods, and movable longitudinally thereof, each of said rods having at the free end a stop to limit the movement of its sleeve, each of said sleeves having a vertical pivot, an arm adjustably carried by each of said vertical pivots, a wind shield secured between said arms, and an auxiliary wind shield mounted adjacent to each end of said first wind shield and foldable against the same, the distance between said fixed, pivot supports exceeding the normal distance between said sleeves.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

JOHN O. HOFBAUER.

Witnesses:
JOHN K. BRACHVOGEL,
PHILIP D. ROLLHAUS.

Defendants' Exhibit "Z–4."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "Z (4)." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

C. F. WENSINGER.

WIND SHIELD.

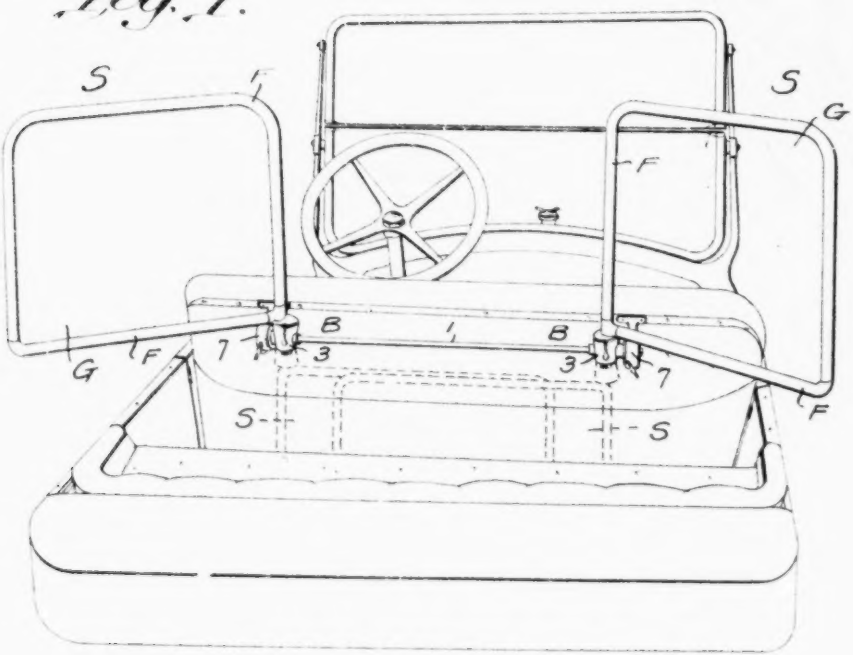
APPLICATION FILED NOV. 6, 1915.

1,219,513.

Patented Mar. 20, 1917.

2 SHEETS—SHEET 1.

Fig. 1.



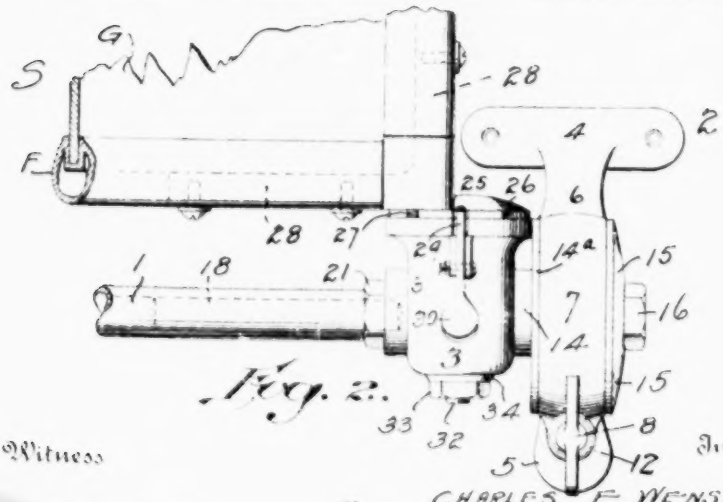


Fig. 2.

Witness

Inventor

CHARLES F. WENSINGER

By

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WIND SHIELD.

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1,219,513.

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2 SHEETS—SHEET 2.

Fig. 3.

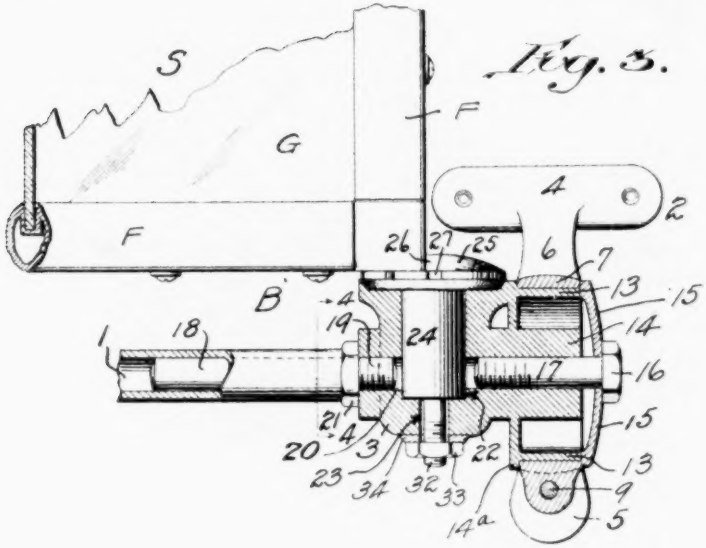


Fig. 4.

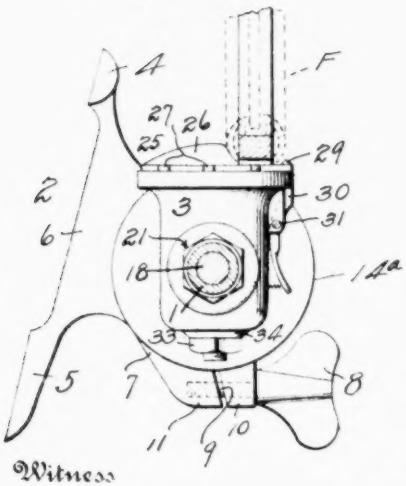
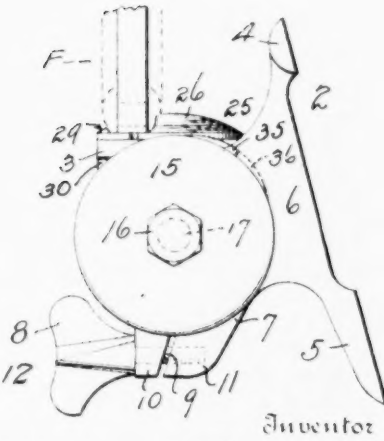


Fig. 5.



Witness

Inventor

CHARLES F. WENSINGER

By

UNITED STATES PATENT OFFICE.

CHARLES F. WENSINGER, OF FREMONT, OHIO, ASSIGNOR TO THE SAFE STORM SHIELD COMPANY, OF FREMONT, OHIO, A CORPORATION OF OHIO.

WIND-SHIELD.

1,219,513. Specification of Letters Patent. Patented Mar. 20, 1917.

Application filed November 6, 1915. Serial No. 60,023.

To all whom it may concern:

Be it known that I, CHARLES F. WENSINGER, a citizen of the United States, residing at Fremont, in the county of Sandusky and State of Ohio, have invented certain new and useful Improvements in Wind-Shields, of which the following is a specification.

This invention relates to wind shields or guards for vehicles, and more particularly to devices of this character especially adapted for use on motor vehicles to shield and protect the occupants of the rear seat thereof.

At present, the common practice is to locate the accepted and standard type of glass shield on a motor vehicle between the front seat and the engine hood, to thus protect and shield the front seat thereof. However, as is well known a shield in this location is of little or no protection to the occupants of the rear seat, since when the car is in motion the air sweeps around the sides of the shield, and thus proves very annoying and uncomfortable to persons seated in the tonneau. Although various means have been devised whereby the rear seat of a vehicle can be shielded, the same have not come into more general use on account of their impracticability for one reason or another.

Accordingly, the present invention has primarily in view a novel and practical wind shield device that may be conveniently supported at the rear of the front seat of a vehicle to thus protect the occupants of the rear seat, while at the same time being more or less ornamental and not in any way interfering with the accessibility of the tonneau.

Another object of the invention is to provide a wind shield at this location including independently adjustable shield members having simple and reliable means whereby they may be readily brought into service, and readily folded out of the way when not in use.

With the above and other objects in view which will more readily appear as the nature of the invention is better understood, the same consists in the novel construction of the invention is shown in the accompanying drawings, in which—

Figure 1 is a perspective view of an automobile, showing the tonneau and the location of the present wind shield device.

Fig. 2 is an enlarged detail elevation of a portion of the supporting bracket for the screen members.

Fig. 3 is a view similar to Fig. 2, but partly in section to more clearly bring out the structural features and characteristics of a novel adjustable supporting means for the screen members.

Fig. 4 is a vertical sectional view on the line 4—4 of Fig. 3, showing the attaching member of the supporting bracket in elevation, and also the detent for maintaining the screen member in the desired adjusted position.

Fig. 5 is a side elevation of the attaching member of the supporting bracket showing the side thereof which is opposite to that appearing in Fig. 4.

Similar reference characters designate corresponding parts throughout the several figures of the drawings.

In carrying out the present invention, it is proposed to provide a wind shield device including independently adjustable screen members which may not only be conveniently handled, but readily set in any desired position to thereby secure the most effective results. In this connection, the invention contemplates a device including the novel screen or shield members referred to, having a relatively fixed position at the back of the front seat. That is to say, that although the screen or wind guard members are capable of moving, the device as a whole remains always in the same position with relation to the upper edge of the front seat. Therefore, as will be observed from Fig. 1, the present invention essentially embodies in its organization the independently adjustable screen members S which include a suitable frame F and a glass G, or other transparent element, carried by a single supporting bracket designated in its entirety as B.

This supporting bracket preferably com-

may be provided with the attaching ears 4 and 5 for securing the entire supporting bracket to the rear side of the front seat of the automobile, preferably near the top thereof to thereby provide sufficient clearance below the connecting rail 1 for folding the adjustable screen members S down close to the back of the front seat when they are not in use.

Referring more particularly to Fig. 3, it will be apparent that the construction of the attaching members 2 are such that they provide for rotatably mounting the adjusting blocks 3. That is to say, these members are provided with a body portion 6 having formed therewith a frictional clamping band 7 which is preferably in the form of a split ring which may be adjusted by means of the thumb bolt 8, whose shank portion 9 loosely passes through an opening in the lip 10 of the band, and is in threaded engagement with the lip 11. Thus, it will be clear that when the bolt 8 is screwed into the threaded socket of the lip 11, the shoulder 12 thereof will draw the lip 10 toward the lip 11, and thus cause the entire band 7 to frictionally engage the hub portion 13 of the adjusting block 3.

The said hub portion 13 of the block 3 is, for the sake of lightness, of open formation though integral with the block, as will be observed from Fig. 3, and surrounds the horizontal axle portion 14 which is also preferably integral with the body of the adjusting block. One side of the hub portion 13 is provided with an annular flange 14ª which slidably engages the side edge of the band 7, while the open side of the hub portion has fitted thereto a spring cap member 15 which is coextensive with the open side of the hub, and also covers the opposite edge of the band 7. This cap member 15 is held in place by means of a suitable bolt 16, the shank 17 of which is in threaded engagement with the axle portion 14 of the block 3. Therefore, it will be apparent that the said adjusting block 3 is adjustably supported to rotate on a horizontal axis, by being arranged in the clamping band 7 of the attaching member 2. However, in order to insure the rotation of the block 3 on a horizontal axis, and at the same time relieve the attaching member 2 of any undue twisting strain due to the weight of the screen member S, the side of the block opposite the axle portion 14 has detachably fitted thereto a supporting pin 18, the greater portion of which fits within the hollow connecting rail 1, while the portion thereof opposite that within the connecting rail is threaded as at 19 to fit into an opening 20 which is concentric with the axis of the hub member 13. To provide a more finished appearance for this part of the

sired fit between the rail 1 and the block, a nut 21 may be utilized.

Accordingly, from the foregoing, it will be obvious that the adjusting blocks 3 at each end of the supporting bracket B can freely turn on an axis that lies in a horizontal plane, and owing to the loose fit of the supporting pin 18 of each block in the robe rail 1, it will be clear that these opposite blocks may be independently moved. However it will be apparent that the connecting rail 1 is essential to the adjustment of both blocks, inasmuch as it maintains the hub portions 13 thereof in proper relation to the clamping bands 7 of the attaching members to prevent them from binding therein, as might be the case if the blocks were canted under the weight of the screen members S.

Referring further to the structural features of the block 3, it will be observed that the same is provided with a central socket 22, having at the bottom thereof an opening 23, the purpose of which will hereinafter more fully appear. This socket 22 receives the shank portion 24 of a swinging screen carrier member designated in its entirety as 25. Thus, the shank 24 of the carrier member constitutes a vertically arranged axis for permitting the free swinging movement of the screen S, or in other words, it provides for the swinging of the screen laterally so that it may be adjusted to any desired position to protect the occupants of the rear seat.

One end of the vertical shank 24 of the carrier 25 is provided with an enlarged head 26 having a plurality of peripheral notches 27, and carrying therewith an angle member 28, shown in dotted lines in Fig. 2 for supporting the frame F of the screen. The notches 27 at the peripheral edge of the head 26 are adapted to receive the locking end 29 of a spring-pressed detent member 30 which may be conveniently pivoted as at 31 on the side of the adjusting block 3. This detent member may be rocked on pivot 31 by a thumb pressure on the handle end thereof to disengage the locking end 29 from any one of the notches 27 to thus permit the lateral swinging of the screen S, and on the other hand when the screen is in the desired adjusted position, the detent will maintain it there, as the locking end 29 will reënter another notch 27 upon the release of the thumb pressure.

The end of the vertical pivot shank 24, opposite the head 26, carries a bolt extension 32 which passes through the opening 23 at the bottom of the socket 22 to an exposed position at the bottom of the block, where it may receive a clamping nut 33 which bears against a suitable washer member 34 inter-

tension 32 in such a manner that the free swinging movement of the vertical pivot shank 24 is in no way hindered, but at the same time any tendency of the pivot shank to leave the socket 22 is prevented. In other words, the nut 33 loosely locks the swinging screen carrier to the block 3 so that when it is desired to shift the screen member to an out of the way position, it will not fall from the block 3.

From the foregoing description, it will be clearly apparent that each screen member S has a free movement on a horizontal axis, and also a free swinging movement on a vertical axis, so that practically any desired adjustment of the screens may be affected. In connection with the horizontal adjustment, it will be observed more particularly from Fig. 5 that the block 3 carries at the upper side thereof, preferably on the annular flange 14^a, a stop member 35 which abuts with a reversely arranged stop member 36 carried by the body 6 of the attaching member 2, as shown in dotted lines in the figure referred to. This construction prevents the turning of the block 3 on a horizontal axis in a backward direction, and aids in maintaining the block 3 in an upright position when the screens are in use.

It is thought that the manipulation and operation of the present wind shield device will be entirely clear from the foregoing, and further reference to the manner of operation is therefore believed to be unnecessary except to observe that the novel construction described in detail provides positive and efficient means for obtaining any desired positioning and adjustment of the screens S to protect the occupants of the rear seat. It will also be obvious that the screens may be easily shifted to an out of the way position even when in their service position, as shown in Fig. 1, to permit ready ingress and egress from the tonneau. When it is desired to entirely do without the use of the shields, it is thought that it will be clear that they may be shifted to the dotted line position shown in Fig. 1, and thus be entirely out of the way, through the novel adjusting means described.

From the foregoing, it is believed that all of the features and advantages of the present invention will be readily understood, and that changes in the form, proportion, and minor details of construction may be resorted to without departing from the scope of the appended claims.

Yclaim:

1. A wind shield device for protecting the occupants of the rear seat of a vehicle, comprising a supporting bracket including opposite attaching members and an intermediate connecting rail, and a screen member carried by each adjusting block, and having means whereby each screen may swing on both a horizontal and vertical axis independent of the other.

2. A wind shield device for protecting the occupants of the rear seat of a vehicle, comprising a supporting bracket including opposite attaching members and an intermediate connecting rail, and an adjusting block pivotally supported between each end of the connecting rail and each attaching member, and a protecting screen carried by said adjusting block.

3. A wind shield device for protecting the occupants of the rear seat of a vehicle, comprising a supporting bracket including oppositely located attaching members and an intermediate connecting rail, and adjusting blocks pivotally supported between the connecting rail and attaching members to move on a horizontal axis, and a screen member carried by each of said adjusting blocks and movable independently of the other.

4. A wind shield device for protecting the occupants of the rear seat of a vehicle, comprising a supporting bracket including oppositely located attaching members and an intermediate connecting rail, and a screen member located at each end of the supporting bracket, and having means for adjustably supporting the same to swing on both a vertical and a horizontal axis, said means comprising an adjusting block having horizontal supporting means respectively bearing in said attaching members and connecting rail, a swinging screen carrier, and means for locking said screen carrier in any adjusted position.

5. A wind shield device for protecting the occupants of the rear seat of a vehicle, comprising a supporting bracket including oppositely located attaching members and an intermediate connecting rail, and a screen member located at each end of the supporting bracket and having means for adjustably supporting the same to swing on both a vertical and a horizontal axis, said means comprising an adjusting block having a hub at one side for working in said attaching member, and a supporting pin at the other side engaging with said connecting rail, a swinging screen carrier mounted on said adjusting block, and means carried by the block for locking said carrier in any adjusted position.

6. A wind shield device for protecting the occupants of the rear seat of a vehicle, comprising a supporting bracket including oppositely located attaching members and an intermediate connecting rail, and a screen member located at each end of the support-

working in said attaching member and a supporting pin engaging with said connecting rail, and also having a socket, a swinging screen carrier having a pivot shank fitting in said socket, means for holding said screen carrier in the socket, and means carried by said block for locking said swinging carrier in any adjusted position.

7. A wind shield device for protecting the occupants of the rear seat of a vehicle, comprising a supporting bracket including oppositely located attaching members having clamping means and a hollow connecting rail, and a screen member located at each end of the supporting bracket, means for adjustably supporting said screen member comprising an adjusting block having a hub portion for frictionally engaging with the clamping means of the attaching member, a supporting pin carried by the block and loosely fitting in said hollow connecting rail, said block also having a socket, a swinging screen carrier having a pivot shank constituting a vertical axis fitted in said socket, means for holding said screen carrier in the socket, said screen carrier having a plurality of peripheral-locking notches, and means carried by said block for engaging with said locking notches of the carrier member for holding the same in adjusted position.

In testimony whereof I hereunto affix my signature in the presence of two witnesses.

CHARLES F. WENSINGER.

Witnesses:

A. K. HODES,

CHESTER A. CULBERT.

Defendants' Exhibit "Z–5."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell Co. Defts. Exhibit "Z (5)." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

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C. R. CLARK.

WIND SHIELD.

APPLICATION FILED FEB. 24, 1913.

1,093,974.

Patented Apr. 21, 1914

2 SHEETS—SHEET 1.

Fig. 1.

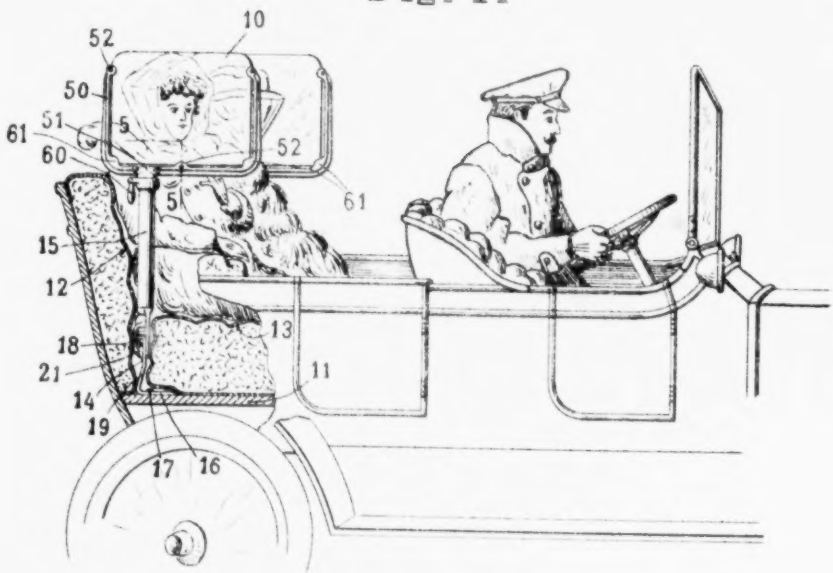
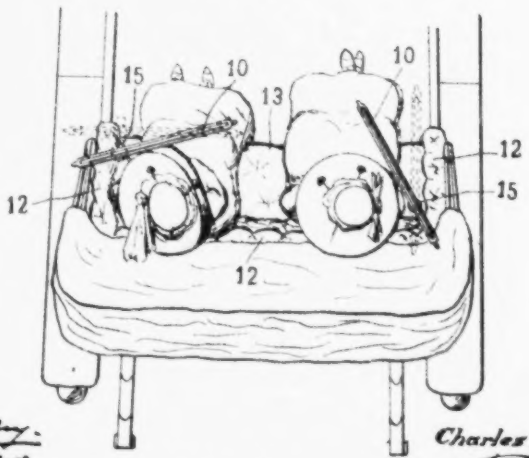


Fig. 2.



WITNESSES

INVENTOR

Charles R. Clark,

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C. R. CLARK.

WIND SHIELD.

APPLICATION FILED FEB. 24, 1913.

1,093,974.

Patented Apr. 21, 1914

2 SHEETS-SHEET 2.

Fig. 3.

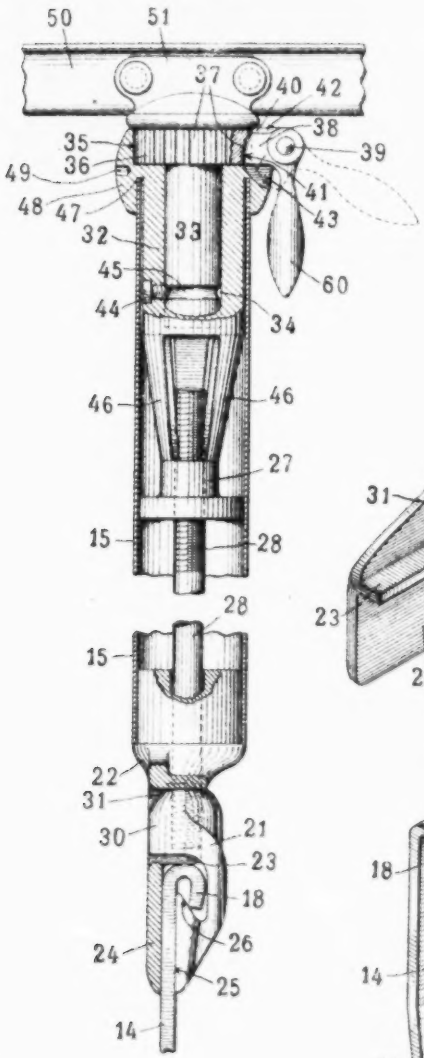


Fig. 5.

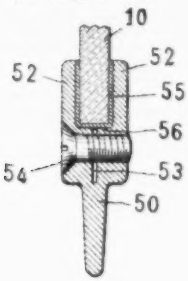
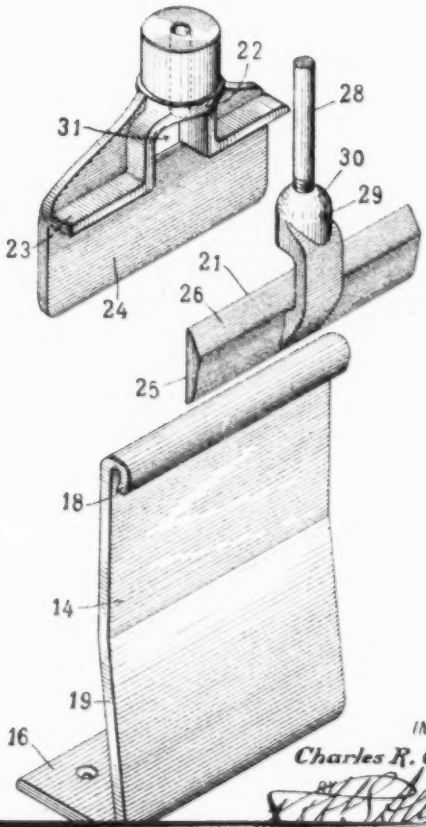


Fig. 4.



WITNESSES

J. Clyde Tagley.

Philip S. McLean.

INVENTOR

Charles R. Clark,

BY

ATTORNEY

UNITED STATES PATENT OFFICE.

CHARLES ROCKWELL CLARK, OF PLAINVILLE, CONNECTICUT.

WIND-SHIELD.

1,093,974. Specification of Letters Patent. Patented Apr. 21, 1914.

Application filed February 24, 1913. Serial No. 750,087.

To all whom it may concern:

Be it known that I, CHARLES R. CLARK, a citizen of the United States of America, and residing at Plainville, in the county of Hartford and State of Connecticut, have invented new and useful Improvements in Wind-Shields, of which the following is a specification.

The object of my invention is to provide a wind shield for automobiles and the like vehicles which will effectively protect the occupants of the rear seat of the vehicle and which will not be in the way at any time.

My invention accordingly consists in mounting the support for the shield upon the seat of the vehicle at a point in between the back cushion and the edge of the seat cushion, where it will be at the side of and out of the way of the person occupying the seat, and in securing the shield member upon this support in such a way that it may be set in any desired angular relation and held in such position.

Another feature of the invention resides in the use of a supporting bracket which is fixedly secured to the seat or other part of the body, and a post which carries the shield proper and is detachably connected to the bracket, so that by these means the shield may be readily mounted and unmounted, as desired.

Another feature consists in supporting the shield member at a point intermediate its ends with such point of support nearer the rear end than to the front end so that the greater part of the shield member will extend forwardly of the support.

A further novel feature is a method of mounting the shield member which consists in holding it in between pairs of inwardly extending clamping fingers of a supporting frame, the frame being cut away at points between the fingers of a pair, to render such finger more or less springy for the purpose of yieldingly gripping the edges of the shield.

Another feature of the invention is a special form of clamp for detachably securing the shield-carrying post upon the support-

illustrated my invention in a concrete and preferred form but I would have it understood that various changes and modifications may be made therein without departing from the true scope and spirit of the invention.

Figure 1, is a longitudinal sectional view illustrating the application of my invention to an automobile, and showing two different positions of the wind shield. Fig. 2, is a plan view. Fig. 3, is an enlarged broken view partly in section of the shield supporting means. Fig. 4, is a detached perspective view of the supporting bracket and the clamping member for detachably securing the post upon this bracket. Fig. 5, is a sectional view of the frame which carries the shield proper, this view being taken substantially on the line 5—5 of Fig. 1.

The shield proper is designated 10. This is preferably transparent and is therefore usually in the form of a flat piece of comparatively heavy plate glass. The shape of the shield may vary but it is preferably made longer than it is wide, substantially in the proportions shown. The shield is supported so as to lie substantially in front of the face of the occupant of the rear seat of the vehicle and is made angularly adjustable so that the occupant may turn it to shield himself to best advantage. And in order that the supporting means for the shield shall not interfere with the usual and ordinary occupancy of the seat it is preferably secured to the seat and disposed in between the back cushion and the edge of the seat cushion.

In Figs. 1 and 2 I have illustrated two preferred arrangements of the shield, the numeral 11 there indicating the rear seat of the car, 12 the back cushion, and 13 the seat cushion. The preferred form of supporting means is also shown in this view, it consisting essentially of a supporting bracket 14 which is secured fast to the seat, and a shield-carrying post 15 which is detachably secured to the bracket. The upstanding supporting bracket is preferably made in one piece with a widened flat base 16 secured to

pushed back into proper en-

cushion being pushed all the way back to where it belongs.

The post 15 is preferably in the form of a hollow column and it is secured to the bracket preferably by means of a clutch member which engages the hook 18 on the bracket. To afford a firm seat for the post upon the bracket, the post is preferably provided with a foot or base 22 having a ledge 23 resting on top of the bracket and a part 24 extending downwardly into engagement with one side of the bracket and the clutch member 21 is made with a flat toe portion 25 engaging the opposite side of the bracket. To secure a wedging engagement between the clutch member and the hook on the bracket, the clutch member 21 is preferably made with an inclined wedging surface 26 which engages directly with the point of the hook. The clutch member is in the case illustrated operated by a nut 27 [illegible] the upper end of the post, which en[illegible] with a screw rod 28 connected at the lower end to the clutch member. The screw rod is shown fixedly connected to the clutch member by means of a transverse key or pin 29, which engages the head portion 30 of such member, this head portion being received in a suitable recess 31 provided for that purpose in the base of the post.

The preferred form of adjustable mounting for the shield member is best illustrated in Fig. 3, wherein the post is shown as carrying a head 32 on its upper end in which is seated a spindle 33, which carries the shield. This so-called head is made with a socket 34 to receive the spindle and above this socket it is made with a concentric enlargement of seat 35 to receive a corresponding enlargement or hub 36 on the spindle. This enlarged shouldered portion of the spindle is provided with a series of peripherally arranged vertical slots 37 therein which are arranged to be engaged by a dog 38, pivoted at 39 on the head. The head is provided with a slot 40 opening into the seat 35 to permit passage of the dog into engagement with the hub inclosed within such seat. The nose or point of the dog is preferably disposed on an arc of a circle as indicated at 41 and the slots in the spindle may be correspondingly curved. Also that part between the bearing lugs 42 in which the dog is pivoted is cut away as at 43 to receive the point of the dog when the dog is tilted down to the dotted line position (Fig. 3). In this position the nose of the dog is free of the slots in the spindle and the shield may therefore be turned to any desired angle screw 44, the point of which engages in an annular groove 45 in the spindle.

The head in which the spindle is mounted may also carry the nut by which the clutch member is operated. Thus in Fig. 3 the nut is shown forming an integral part of the head, it being connected thereto by arms 16. The nut is thus in this case merely a screw threaded seat in the lower end of the revoluble head. To serve the function of a nut the head makes abutting engagement with the upper end of the hollow post at the point 47 and the joint at this point may be concealed by providing the head with a downwardly extending flange 48. The head may be turned to adjust the clutch member by any suitable means. It is in the illustration shown provided with an opening 49 to receive the point of a spanner wrench. The head may also be turned by means of the handle 60 when the dog 38 is disengaged from the slots 37.

The shield is preferably mounted in a frame 50 which may be secured to the head of the spindle by engaging it between two upstanding ears 51 on the top of the spindle. The preferred manner of securing the shield in this frame is to grip it between pairs of spring clamping fingers or lugs 52. Sufficient flexibility may be given these fingers by cutting away the material of the frame between each pair of such lugs, substantially as indicated at 53. Screws 54 or like fastening means may be employed for drawing the lugs together into clamping engagement with the shield held therebetween. Pads 55 of felt or like material may be interposed between the lugs and the shield material and shoulders 56 are preferably provided at the lugs to limit the inward movement of the shield in between the lugs and to hold the shield free of engagement with the frame at all points except at the lugs. This structure provides an extremely ornamental mounting for the shield and at the same time renders the replacement of the shield a very easy matter. Additional lugs 61 may be provided for holding the shield at the corners of the frame.

To get the greatest range of usefulness the shield should extend forwardly from its support a considerable distance. I therefore prefer to support the same at a point in between its ends but nearer to the rearward end. In this way the greater portion of the shield lies forward of the support so that by adjusting it angularly about the support the wind coming from practically any direction may be warded off.

It will be noted that the supporting

tain range of lateral adjustment of the post upon the bracket. This lateral adjustment adds further to the efficiency of the shield because if the desired shielding effect cannot be obtained by a simple angular adjustment of the shield, then the shield may be shifted bodily in either direction until just the right effect is secured.

While I have so far found it desirable to locate the shield carrying support at the end of the seat, I would have it understood that it may be located at other points, as may be found most suitable. Thus it might be located at the rear of the seat, in which case it would be disposed between the rear edge of the seat cushion and the back cushion. Both these possible arrangements are clearly illustrated in Figs. 1 and 2, the shield at the right in Fig. 2 and shown in detail in Fig. 1 being disposed at the rear edge of the seat with its supporting bracket engaged in between the rear edge of the seat cushion and the back cushion, while the shield shown at the left in Fig 2 is disposed at the end of the seat and with its supporting bracket interposed in between the end edge of the seat cushion and the back cushion which at that point forms the arm rest and constitutes the end of the seat. This latter is the preferred arrangement because it provides a greater possible range of adjustment of the shield. Another advantage of this arrangement is that the bracket, lying as it does between the end of the seat cushion and the arm rest is disposed longitudinally of the car and therefore when the clump is loosened the whole shield may be adjusted either forwardly or rearwardly. I have used the term back cushion as a convenient expression for describing the upright cushion lying at the rear and ends of the seat for providing the back rest and arm supports and the expression will therefore be construed in the broadest sense in which it is used.

What I claim is:—

1. In a vehicle, a seat having a back and side arms, upright cushions for the back and side arms extending downward substantially to the seat and a seat cushion resting on the seat with its edges fitting closely against the lower edge of the upright cushions, a supporting bracket secured to the seat beneath the seat cushion and adjacent to one of the upright cushions, a post carried by said bracket disposed between said upright cushion and the edge of the seat cushion, extending upwardly above the seat cushion and lying relatively close against said upright cushion to be thereby out of the way of the

bination of a supporting bracket arranged for attachment to the body portion of an automobile and provided with a hook on its upper end, a post resting upon the hooked upper end of the bracket and provided with a downwardly extending part engaging the side of the bracket, a dependent clutch member carried by the post, engaging the opposite side of the bracket and making wedging engagement beneath the hook on the bracket, means for drawing the clutch member into firm engagement with the hook whereby to clamp the post upon the bracket and a wind shield mounted upon the upper end of the post.

3. In an automobile wind shield, the combination of an upstanding supporting bracket arranged for attachment to the body portion of an automobile and provided with a hook on its upper end, a hollow post resting upon the hooked upper end of the bracket and provided with a downwardly extending part engaging one side of the bracket, a dependent clutch member carried by the post, engaging the opposite side of the bracket and making wedging engagement beneath the hook on the bracket, a screw rod fixed to the clutch member and extending up through the hollow post, a rotatable head seated in the upper end of the post, making abutting engagement with the end of the post and provided with a screw threaded seat receiving the threaded end of the rod and a shield member mounted on the head.

4. In an automobile wind shield, the combination of a one-piece supporting bracket made with a broad flat base, an upright portion bent up from the base and a hook turned down at the upper edge of such upright portion, a post resting upon the upper edge of the bracket and having a backing part, an adjustable clamping hook carried by the post and engaging beneath the hook on the supporting bracket opposite said backing part, a shield carrying member rotatably adjustable on the post and means for securing said member in adjusted position upon the post.

5. In an automobile wind shield, the combination of a support having a flat base secured to the seat of the automobile and an upright portion extending up between the back cushion and the edge of the seat cushion, said upright portion being inclined at its lower end to substantially fit the inclination of the lower end of the back cushion, so as not to interfere with the seat cushion being pushed back into proper en-

the upper end of the post provided with a shouldered seat having an opening in one side thereof, a spindle rotatably engaged in said seat and provided with a peripheral series of slots therein, a shield member carried by said spindle and a pivoted dog carried by the post having a part arranged to project through the opening in the side of the seat into engagement with any one of the peripheral slots in the spindle for locking the same.

7. In an automobile wind shield, the combination of a supporting post, a head on the upper end of the post provided with a shouldered seat having an opening in one side thereof and with a spindle socket below the seat, a rotatable spindle engaged in the socket, provided with a shouldered enlargement engaged in the seat aforesaid and having a peripheral series of slots therein, a dog pivoted on the head arranged in one position to project through the opening in the seat into engagement with one of the slots in the enlargement on the spindle and a shield member carried by the spindle.

8. In an automobile wind shield, the combination of a hollow post, a head rotatably seated in the post in abutting engagement with the upper end thereof, a screw-threaded seat in the lower portion of the head, a screw rod passing up through the post and engaged in said seat, a supporting bracket, a clutch member connected with the lower end of the screw rod and engaging the supporting bracket whereby to secure the post upon such bracket, a spindle rotatably seated in the head and provided with a peripherally slotted portion also received within the head, a pivoted dog on the head arranged to project inwardly into engagement with the slots in the spindle, and a shield member carried by the spindle.

9. An automobile wind shield comprising a supporting bracket, a hollow post engaged with said bracket, a member carried by the post, arranged for clamping engagement with the bracket, a connection from said clamping member extending up through the hollow post, means mounted in the top of the post engaging the said connection for operating the clamping member, a shield member rotatably mounted on the post and means also mounted at the top of the post for securing the shield member in adjusted position thereon.

10. In a vehicle having front and rear seats, the rear seat having a back and side arms with cushions, a transparent wind shield, a post for supporting said shield and a base bracket for said post secured to the rear seat beneath its cushion.

CHAS. ROCKWELL CLARK.

Witnesses:
P. N. Paton,
A. A. McLeod.

Defendants' Exhibit "Z–6."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "Z (6)." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

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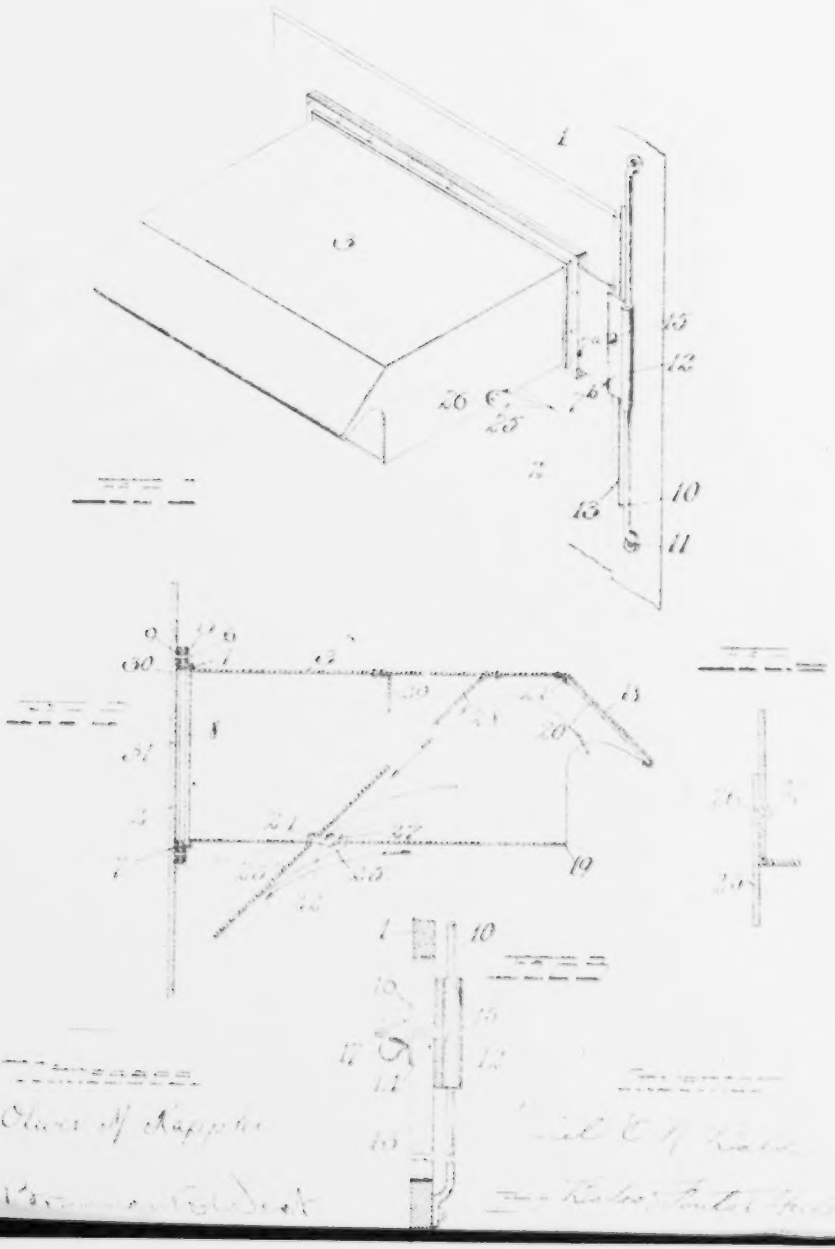
D. O. N. BALDWIN.

WINDOW SHIELD.

APPLICATION FILED FEB. 28, 1910.

1,078,765.

Patented Nov. 18, 1913.



UNITED STATES PATENT OFFICE.

DANIEL O. N. BALDWIN, OF CLEVELAND, OHIO.

WINDOW-SHIELD.

1,078,765. Specification of Letters Patent. Patented Nov. 18, 1913.

Application filed February 28, 1910. Serial No. 546,335.

To all whom it may concern:

Be it known that I, DANIEL O. N. BALDWIN, a citizen of the United States, residing at Cleveland, in the county of Cuyahoga and State of Ohio, have invented a certain new and useful Improvement in Window-Shields, of which the following is a full, clear, and exact description, reference being had to the accompanying drawings.

This invention relates to devices for shielding the windows of street cars, locomotives, or other like vehicles, or the so-called "wind shields" of automobiles. In fact, a device of the character set forth herein is applicable to any window or sight opening which it is desired to protect from sleet, snow or other material which might accumulate thereon and obstruct the vision therethrough.

Among the objects of the invention are the provision of a device of this character which is capable of convenient application to and removal from the window or sight opening with which it is to be employed; also the provision of a device of this character which is capable of convenient adjustment for height to accommodate different observers.

A further object of the invention is to provide a device of this kind which shall be extremely efficient in operation, while being relatively simple and inexpensive of production.

In the embodiment of my invention disclosed in the drawing forming part hereof,—Figure 1 represents a perspective view of a portion of a window having my device applied thereto; Fig. 2, a vertical sectional view taken through the window and device shown in Fig. 1; Fig. 3, an enlarged sectional detail of the means by which my device may be adjustably secured to a window or sight opening; and Fig. 4, a detail of the connection between one of the shield plates and the casing.

Describing the various parts in the drawing by reference characters, 1 denotes the frame of a window or similar observation device, and 2 the glass or other transparent medium carried by the frame. Secured in wardly and inwardly to form a recess, as shown at 4, and is provided with an additional lateral flange 5 by means of which the casing may be attached, as by rivets 6, to a frame 7 of heavier material. This frame has a central opening corresponding approximately in size to the internal area of the casing 3 and the frame projects inwardly substantially as far as the interior of the inner wall of the casing 3, forming a groove with the recess 4 for the reception of a pane or plate 8 of glass or other transparent material. The inner face of the frame 7 has applied thereto a packing ring or gasket 9, of rubber or other suitable material, being secured to the frame and to the flange 5 by means of the rivets 6.

For the purpose of securing the device to the window with which it is to be used, the frame 7 will be conveniently provided with a lateral extension 7^a. As a means for providing a vertical adjustment between the extension 7^a and the window frame, the construction shown in the drawing may be employed. In this construction, the window frame is shown as provided with a vertically-extending rod 10 having its ends projecting inwardly and secured to the frame, as shown at 11. The end of the extension 7^a is provided with a sleeve 12 mounted on said rod. Between the rod 10 and the inner edge of the window frame, the latter is provided with a vertical slot 13. The outer end of the extension 7^a is projected outwardly, as shown at 7^b, a sufficient distance to clear the outer surface of the window frame, with its inner surface in close proximity to such outer surface of the frame. A bolt 14 extends through 7^b and through the slot 13, the bolt having a head 15 bearing against the outer surface of the extension 7^b and having on the inner side of the frame a washer 16 adapted to bear against said frame on opposite sides of the slot 13, the inner end of the bolt being provided with a wing nut 17 by means of which the washers may be tightened against the inner side of the frame. The construction described provides an extremely efficient and convenient means

tures:—At its outer end the casing is provided with a plate projecting downwardly and forwardly from the upper wall thereof at an angle of about 45°, or other suitable angle, said plate being shown as an apron 18. The casing 3 may be conveniently formed from a single sheet of metal with the outer edge 19 of the bottom directly below the upper edge of the apron 18, whereby the apron overhangs the bottom. The apron 18 extends downwardly approximately half the distance between the top and bottom of the casing 3, and is provided on its inner surface with a mirror 20, which may be secured in place in any convenient manner, as by bending the lower end of the apron around the lower end of the mirror, securing the upper end in place by means of the metallic clamp 21.

The bottom wall of the casing is provided with a transverse slot 22 through the rear of which projects a plate 23, said plate being pivotally supported by the casing. A convenient manner of so pivoting the plate is illustrated in the drawings and comprises a transverse rod 24 fitting in a corresponding recess in the plate. This plate is provided with a pair of side flanges 25, located each at an edge of the plate and extending above the bottom of the casing and the slot formed therein. The flanges 25 coöperate with the opposite ends of the plate 23 and the opposite ends of the slot 22 to form a discharge chute for the air admitted to the front of the casing.

For the purpose of adjusting the angle which this plate makes with the bottom of the casing, the side flanges may each be provided with a suitable projection 26, conveniently pressed therefrom and adapted to enter recesses 27 in the casing wall. In stormy weather, the plate will generally be secured in the position shown in full lines in Fig. 2, namely, extending over the slot 22 at an angle of about 45° with the bottom of the casing. The plate will be of such extent that, when in this position, its upper edge will be about midway of the height of the casing, or on a line drawn from the lower edge of the apron 18 to a point half way between the top and bottom of the glass 8. The slot 22 will preferably be located nearer the rear end of the casing 3 than the front end of the same.

28 denotes a downwardly-inclined plate secured to the upper wall of the casing and projecting downwardly and rearwardly at an angle of about 45° and preferably in the

may therefore be turned to any

23 when the latter is in the position shown in full lines in Fig. 2.

In operation, the device will be adjusted so that the eye of the observer will be at about the point 30. It will be observed that lines drawn from this point to the lower edge of the apron 18 and to the outer edge of the bottom of the casing will respectively cut the lower ends of the plates 28 and 29 and the upper end of the plate 23. It thus follows that, with the eye at the point 30, the plates 24, 28 and 29 will not interfere with the field of vision. The apron 18 protects the upper portion of the casing against the entrance of snow, sleet, or other matter which might interfere with the vision. The plate 23 protects the lower part of the casing, adjacent to the glass 8, against the admission of such material. The apron and plate prevent any material entering the casing and moving in a straight line from getting into the chamber at the rear of said plate. The plates 23 and 29 form in effect a dead air space or cushion at the rear of the casing, which will prevent snow, sleet, etc., from entering the space behind the plates through the eddying action of the air currents. Should any material be carried beyond the lower end of the plate 28, it will probably be dropped into the space in front of the plate 23 before reaching the opening formed between this plate and the plate 29 thereabove. Furthermore, the provision of the slot 22, with the inclined plate 23, tends to carry out any material that may enter the front of the casing. More or less eddying of the air will occur at the front of the window to which my device is attached. This eddying around the vicinity of the outlet slot 22 and the downward inclination of the plate 23 below such slot will facilitate the flow of air through said slot from the front of the casing, as indicated by the arrows. This action also serves to oppose the entry of snow or other material into the chamber behind the plate 23. In fair weather, the plate 23 may be swung into the position shown in dotted lines in Fig. 2 and be retained in such position by the frictional engagement of the projections 27 with the recesses of the flanges 22.

As the field of vision will be limited in the manner indicated by the lines from the point 30, the mirror 20 is provided for the purpose of enabling the observer to see objects that may be dangerously near the vehicle to which my device may be applied. This is important in the operation of rap-

chamber 31 between the pane 8 and the window or other transparent member to which my device is applied. The provision of this space prevents the difference in temperature between the apartment or space at the rear of the window and the temperature which exists in front of the pane 8 from producing condensation on and frosting of these surfaces. Furthermore, the construction of the frame at the rear end of the casing, including the gasket 9, prevents snow, rain or other moisture on the surface 2 from entering the space bounded by the frame, keeping the "sight" clear.

Having thus described my invention, what I claim is:

1. In a device of the character specified, the combination of an adjustable casing having at its front end a downwardly deflected apron and having at its rear end a frame adapted to rear against and partially cover the surface to which the device is to be applied, and a pane of transparent material at the rear of said casing and at the front of said frame, whereby an air space will be provided between said frame and the surface to which said device is applied.

2. The combination, with a transparent member, of a protecting device therefor, said device comprising a casing having at its rear end a frame adapted to be applied to said member, and a pane of transparent material carried by the rear portion of said casing and separated from said member by an air space inclosed by said frame, and means for mounting said casing so as to be adjustable to different positions over said transparent member.

3. In a device of the character specified, the combination of a casing having at its rear end a frame, a gasket of yielding material applied to the rear surface of said frame, and means coöperating with said frame for securing the device in operative relation to the surface with which it is to be used.

4. The combination, with a frame, of a member of transparent material supported thereby, said frame having a vertical slot and a rod extending parallel with said slot, a protecting device comprising a casing, a lateral projection at the inner end of said casing, said projection being provided with a sleeve for said rod, a bolt connected to said projection and extending through said slot and an adjusting nut on said bolt on the inner side of said slot.

5. In a device of the character set forth, the combination of a casing having at its rear end a frame, a pane of transparent material and

6. In a device of the character set forth, the combination of a casing, having its upper front end deflected downwardly and forwardly to form an apron, and an angularly adjustable plate projecting upwardly from the bottom wall of said casing intermediate between the front and rear of said wall.

7. In a device of the character set forth, the combination of a casing having its upper wall deflected downwardly to form an apron, and a plate projecting upwardly and forwardly from the bottom wall of said casing to a point substantially as high as the bottom of said apron.

8. In a device of the character set forth, the combination of a casing having a plate projecting downwardly from the upper wall thereof, and a plate projecting upwardly from the bottom wall of said casing and staggered with respect to the former plate.

9. In a device of the character set forth, the combination of a casing having a bottom and a top wall, a plate projecting downwardly from the top wall, the bottom wall being provided with a transverse slot, and a plate adjacent to the rear edge of said slot and projecting upwardly therefrom.

10. In a device of the character set forth, the combination of a casing having a bottom and a top wall, a plate projecting downwardly and forwardly from the top wall, the bottom wall being provided with a transverse slot, and a plate adjacent to the rear edge of said slot and projecting upwardly and forwardly to substantially the height of the lower end of the former plate.

11. In a device of the character specified, the combination of a casing having a downwardly directed plate near the front end of the top wall and having in the bottom wall thereof a transverse slot, a plate pivoted adjacent to the rear edge of said slot and extending therethrough, and means for supporting said plate in adjusted position with respect to said slot.

12. In a device of the character set forth, the combination of a casing having a downwardly directed plate near the front end of the top wall and having in its bottom wall a transverse slot, a plate extending through said slot and pivoted adjacent to the rear edge of the same, said plate having at each end of the slot a downwardly-extending flange.

13. In a device of the character set forth, the combination of a casing having in its bottom wall a transverse slot, and a plate adjacent to the rear edge of the slot and

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therebetween and arranged to form a dead air chamber at the rear of the casing in front of said pane.

15. In a device of the character set forth, the combination of a casing, a pane of transparent material, and plates projecting from the top and bottom of said casing one of said plates being adjustable and providing a field of vision therebetween and arranged to form a dead air chamber at the rear of the casing in front of said pane.

16. In a device of the character set forth, the combination of a casing having a downwardly directed apron extending from the front of the top wall and overhanging the bottom of the casing, an inclined plate extending downwardly and rearwardly from the top wall of the casing, a vertical plate extending downwardly from the top of said casing and located rearwardly of the former plate, and a plate projecting upwardly and forwardly from the bottom of the casing in the plane of the first-mentioned plate, having its upper edge spaced therefrom and substantially in vertical alinement with the second plate, the lower ends of the apron and the two plates first-mentioned being in substantially the same straight line and the upper end of the last-mentioned plate and the outer edge of the lower wall of the casing being in substantially the same straight line, said lines converging and meeting at a common point a short distance to the rear of said casing.

17. In a device of the character set forth, the combination of a casing having a downwardly and forwardly directed plate near the front of the top wall and overhanging the bottom of the casing, an inclined plate extending downwardly and rearwardly from the top wall of the casing at the rear of the first plate, and a plate projecting upwardly and forwardly from the bottom of the casing in the plane of the second plate and having its upper edge spaced therefrom.

18. In a device of the character specified, the combination of a casing, plates projecting from inside walls of the casing and limiting the field of vision therethrough in a forward direction, one of said plates being inclined, and a mirror on the inclined surface of said plate, to broaden the field of vision in a lateral direction.

19. The combination with a member of transparent material of a protecting hood or casing arranged to project therefrom and having a transverse pane of transparent material therein and of means for securing the hood at different positions opposite said member with its pane spaced from said member and the intervening space between said pane and member inclosed.

In testimony whereof, I hereunto affix my signature in the presence of two witnesses.

DANIEL O. N. BALDWIN.

Witnesses:
J. B. HULL,
A. J. HUDSON.

Defendants' Exhibit "Z–7."

[Endorsed]: No. E–86. Keller vs. Adams-Campbell. Defts. Exhibit "Z (7)." Filed 10/5/21. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 2, 1922. F. D. Monckton, Clerk.

Fig. 1.



Fig. 2.

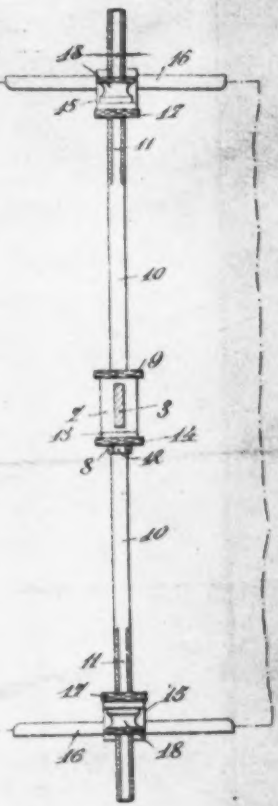
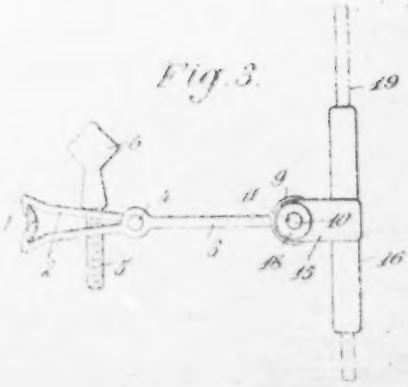


Fig. 3.



OFFICE NATIONAL DE LA PROPRIÉTÉ INDUSTRIELLE.

BREVET D'INVENTION.

IX. — **Matériel de l'économie domestique.**

4. — MEUBLES ET AMEUBLEMENT, MOBILIER DES JARDINS.

N° 460.778

Support orientable pour miroirs à une ou trois faces.

Société E. MOREAU et H. CARIMANTRAND résidant en France (Seine).

Demandé le 26 juillet 1913.

Délivré le 14 octobre 1913. — Publié le 11 décembre 1913.

Cette invention a pour objet un support très simple pour miroirs à une ou trois faces, plus spécialement destiné à être fixé aux crémones de fermeture des croisées et permettant une orientation convenable dudit miroir, lequel est maintenu de telle façon que les faces latérales ne tendent jamais à s'ouvrir ou à se fermer inopportunément, parce que tout devers est impossible.

Afin que l'invention soit bien comprise, il est annexé au présent mémoire et seulement pour la démonstration, un dessin dans lequel :

La fig. 1 est une vue en élévation sectionnelle longitudinale de l'appareil ;

La fig. 2 est une vue en coupe sectionnelle suivant A-B de la figure 1 et en rabattement sur la droite de celle-ci ;

La fig. 3 est une vue en plan en projection de la figure 1.

Dans ce dessin, 1 est la tige de la crémone sur laquelle viennent en prise les pinces 2 d'un support 3. L'une des pinces 2, comme cela est déjà connu, est articulée autour de l'axe 4 et le serrage des pinces peut être obtenu par celui de la vis 5 à tête plate ou autre 6.

Le support 3 présente, à sa partie opposée aux pinces 2, une douille ou moyeu 7 traversé à frottement doux par un manchon 8 taraudé à sa partie inférieure et muni d'une tête moletée 9 à son extrémité supérieure. Le manchon 8 est solidaire d'une tige 10 filetée à ses deux extrémités, avec méplat 11 sur l'un des côtés.

La partie filetée du manchon 8 est préférablement conique et présente aussi un méplat 12, de manière que la bague 13 interposée entre le moyeu 7 et l'écrou moleté 14 ne puisse pas tourner parce qu'elle n'est pas percée d'un trou rond. La conicité du filetage empêche en outre la bague 14 de déterminer un serrage trop grand de la douille 7 entre la bague 13 et la tête moletée 9 qui empêcherait le manchon et par conséquent la tige 10 de tourner librement dans ledit moyeu 7.

Sur chaque extrémité filetée de la tige 10 est emmanché un bras 15 porteur d'un guide 16 en forme de gouttière. Ce guide 16 est préférablement garni intérieurement de feutre.

Le trou d'emmanchement de chaque bras 15 sur la partie filetée de la tige 10 n'est pas rond, de façon à ce que chaque bras ne puisse pas avoir de déplacements angulaires par rapport à cette tige 10. Mais la position dans le sens axial de la tige 10 de chaque bras 15 peut être réglée par la rotation des écrous 17 et 18 entre lesquels chaque bras 15 est serré.

On comprend ainsi que si 19 est la paroi d'un miroir, on peut serrer ce miroir 19 par

ces bords supérieur et inférieur entre les deux guides 16 dont la position est réglée à l'aide des écrous 17 et 18, et qu'ensuite ledit miroir 19 peut être orienté de toute façon appropriée autour du moyeu 7, puisque le manchon 8 solidaire de la tige 10 peut tourner librement à l'intérieur de ce moyeu et que les bras 15 ne peuvent avoir aucun déplacement angulaire par rapport à la tige 10 grâce au méplat 11 des parties filetées de cette dernière.

Si le miroir est à trois faces, c'est bien entendu la partie médiane qui est serrée entre les deux guides 16.

Il est à remarquer que la partie lisse du manchon 8 pourrait avoir une longueur légèrement supérieure à celle du moyeu 7, de façon à ce que la bague 13 vienne buter par serrage de l'écrou 14 contre l'extrémité inférieure de cette partie lisse et qu'alors il ne serait pas utile que le filetage, que porte intérieurement le manchon 8, soit conique.

De ce qui précède, on comprend que le miroir est toujours tenu de façon invariable entre deux guides 16 et qu'il ne peut pas présenter de devers, de sorte que, s'il est à trois faces, les côtés latéraux ne sont pas sollicités à s'ouvrir ou à se fermer.

RÉSUMÉ.

Le support orientable pour miroirs à une ou trois faces est caractérisé par :

1° Le moyen de ce support dans lequel peut tourner à frottement lisse un manchon solidaire d'une tige filetée qui porte à chacune de ses extrémités un bras muni d'un guide, de telle façon qu'entre les deux guides peuvent être serrés les bords supérieur et inférieur du miroir, la position des bras pouvant être réglée à l'aide d'écrous entre lesquels ils sont serrés dans la partie par laquelle ils sont emmanchés sur la tige ;

2° Les méplats présentés par les extrémités filetées de la tige du support et sur lesquels sont emmanchés les bras par des trous épousant la forme des méplats, afin que les bras ne puissent avoir aucun déplacement angulaire par rapport à la tige qui les porte ;

3° Le mode de montage du manchon solidaire de la tige à l'intérieur du moyeu du support pour que la tige puisse être orientée de toute façon appropriée par rapport au moyeu sans avoir d'effort appréciable à exercer à ce sujet.

SOCIÉTÉ E. MOREAU ET H. GARIMANTRAND.

Par procuration :

BOHAMI et JULIUS.

may therefore be turned to any

Translation of French Letters Patent No. 460,778, Defendants' Exhibit "Z–7," and Affidavit of Elizabeth B. Graham as to Correctness of Translation.

FRENCH REPUBLIC.

NATIONAL OFFICE OF INDUSTRIAL PROPERTY.

PATENT OF INVENTION.

IX Plant of Domestic Economy.
4 Utensils and Furniture.

Personal Property of the Gardens.

No. 460,778.

Movable Support for Mirrors, with one or three Panels.

Company of E. Moreau and H. Carimantrand, Resident in France (Seine).

Solicited July 26, 1913.
Delivered Oct. 14, 1913.
Published Dec. 11, 1913.

The object of this invention is to provide a very simple support for Mirrors with one or three panels, especially designed to be fixed on a window casing permitting a convenient movement of said mirror, which is held in such a way that the side panels will never open or close except by manual effort because inclination of the central panel is prevented.

Although this invention is well covered, there is annexed to this memorandum—only for the demonstration—a drawing in which:

Fig. 1 is a view in section and longitudinal elevation of the apparatus.

Fig. 2 is a view in section, following A–B of Fig. 1.

Fig. 3 is a plan view in projection of Fig. 1.

In this drawing 1 is the support which the clamping members 2 or support 3 are adapted to grip. One of clamps 2, as shown, is pivoted around axis 4. The tightening of the clamp can be accomplished by a thumb screw 5 or 6.

Support 3 is formed at the opposite end to clamps 2, with a bearing 7 for the reception of a muff 8, threaded at its lower end and formed with a half head at its upper extremity. Muff 8 is connected to a vertical rod 10 which is threaded at its two extremities and flattened at one side as at 11.

The threaded part of muff 8 is preferably tapered and is flattened at one side as at 12, in a manner that the ring 13, interposed between the bearing 7 and the screw nut 14 cannot turn because it is not formed with a round hole. In other words it snugly fits the flattened threaded end of muff 8. The taper of the threaded portion of the muff 8 hinders nut 14 from being tightened too much against the bearing 7, preventing clamping of the ring 13 and the head 9 of the muff which would hinder the muff and consequently the rod 10 from turning freely in the bearing 7. On each threaded extremity of the vertical rod 10 is mounted an arm 15, each of which

carries a guide 16 which is preferably lined on the inside with felt.

The mounting of the arms 15 on the threaded parts of the rod 10 is such that the arms are not turnable about the rod 10. But the vertical position of each arm 15 can be regulated by adjusting the screw nuts 17 and 18 between which each arm 15 may be clamped.

One understands also that if 19 is the casing of a mirror one can clamp the mirror 19 between the two guides 16, the positions of which are regulated by the screw nuts 17 and 18, and that the mirror 19 is movable in every way around the bearing 7 as the muff 8 is connected to the rod 10 and is freely turnable in the bearing 7. The arms 15 of course are secured from swinging movement on the rod 10, because of the flattened sides 11 of the threaded ends of the rod.

If the mirror has three panels, it is, of course, the intermediate part which is supported between the two guides 16.

It is to be noticed that the bearing surface of muff 8 is slightly shorter than that of bearing 7, in a way that ring 13 will be caused to bear against the lower face of the bearing by tightening of screw nut 14, and for this reason it would be advantageous that the threads which carry the nut 14 on muff 8 be tapered.

From the preceding description one understands that the mirror is always held clamped between the two guides 16 in a true vertical position and that

it cannot tilt so that if there are three mirrors, the side ones will not open or close by gravity action.

RÉSUMÉ.

The movable support for mirrors with one or three faces is characterized by:

1. The bearing of this support in which a muff can turn with smooth friction with a threaded rod which carries at each of its extremities an arm, supplied with a guide, in such a way that between the two guides can be clamped a mirror; the vertical position of the arms can be regulated by the aid of screw nuts between which they are gripped in the part by which they are mounted on the body.

2. The flattened sides presented by the threaded extremities of the rod of the support and on which the arms are mounted by the holes (or gaps) embracing the flattened sides, although the arms cannot have any swinging movement on the rod which supports them.

3. The mode of setting up of the solidary muff of the body to the interior of the bearing for support, in order that the rod can be moved in every appropriate way by swinging in the bearing, without exercising an appreciable effort in the matter.

COMPANY OF E. MOREAU AND H. CARIMANTRAND.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—Appeal No. 3881.

CLARENCE D. KELLER, and ARTHUR C. LILLIE Doing Business as HARTFORD WINDSHIELD COMPANY.

Plaintiffs-Appellants,

vs.

ADAMS-CAMPBELL COMPANY, INC., et al.,

Defendants-Appellees.

Affidavit of Elizabeth B. Graham.

State of California.

City and County of San Francisco,—ss.

Elizabeth B. Graham, being first duly sworn, deposes and says she is skilled and experienced in translating from the English language to the French language, and from the French language to the English language; that she has translated from the French language to the English language the French Letters Patent No. 460,778, in the name of E. Moreau and H. Carimantrand, marked Defendants' Exhibit "Z–7" in this cause; and that to the best of her knowledge and belief such translation is correct.

ELIZABETH B. GRAHAM.

Subscribed and sworn to before me this 16th day of August, 1922.

[Seal] W. W. HEALEY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Clarence D. Keller et al. vs. Adams-Campbell Co., Inc., a Cor., et al. Translation of French Letters Patent No. 460,778. Defendants' Exhibit "Z7," and Affidavit of Elizabeth B. Graham as to Correctness of Translation. Filed August 17, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

[Endorsed]: No. 3881. United States Circuit Court of Appeals for the Ninth Circuit. Clarence D. Keller and Arthur C. Lillie, Doing Business as Hartford Windshield Company, Appellants, vs. Adams-Campbell Company, Inc., a Corporation, T. R. Gabel, A. F. Kipper, Individually, and A. F. Kipper, Doing Business as Kipper & Company; Harry W. Hahn, Doing Business as Harry W. Hahn Manufacturing Company; and Augustine S. Lockwood, Individually, and Augustine S. Lockwood, Doing Business as Kozy Wing Auto Supply Company, Appellees. Book of Exhibits. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed August 17, 1922.

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Book of Exhibits. Filed September 23, 1922. F. D. Monckton, Clerk.

FILED
APR 25 1923
WM. R. STANSBURY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1922.

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY.

Plaintiffs and Petitioners,

vs.

ADAMS-CAMPBELL COMPANY, INC. (a Corporation), T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as Kipper & Company; HARRY W. HAHN, Doing Business as Harry W. Hahn Manufacturing Company; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as Kozy Wing Auto Supply Company,

Defendants and Respondents.

Petition for Writ of *Certiorari* to Be Addressed to the Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION AND BRIEF

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In the Supreme Court

OF THE

United States

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY.

Plaintiffs and Petitioners,

vs.

ADAMS-CAMPBELL COMPANY, INC. (a Corporation), T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as Kipper & Company; HARRY W. HAHN, Doing Business as Harry W. Hahn Manufacturing Company; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as Kozy Wing Auto Supply Company,

Defendants and Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

That your petitioner, CLARENCE D. KELLER, was the owner of United States Letters Patent No. 1,284,-357, issued November 12th, 1918, for new and useful

improvements in windshields; that said original patent was inoperative to protect the real invention due to defective and insufficient claims appearing in the specification, all of which arose through inadvertence, accident and mistake and without any fraudulent or deceptive intention on the part of your petitioner; that promptly upon discovering said defects and insufficiencies and within a period of six months and ten days following the granting of said original patent, your petitioner, Clarence D. Keller, on May 22nd, 1919, applied for a reissue of said patent in accordance with the provisions of Sec. 4916, R. S.; that after due examination the Commissioner of Patents granted your petitioner, Clarence D. Keller, reissue Letters Patent No. 14,919, dated July 20th, 1920, for the same invention as was contained in the original patent, but with additional claims defining more clearly the essential features of the invention.

II.

Believing that defendants herein had been and were infringing said reissue Letters Patent your petitioners, Clarence D. Keller, and his exclusive licensee, Arthur C. Lillie, commenced suit in the United States District Court for the Southern District of California on or about July 1st, 1921 to restrain the infringing acts of said defendants and for an accounting for damages and loss of profits.

III.

That defendants at the trial of said suit admitted infringement of certain claims of said Reissue Letters Patent (R. 154), but denied the validity of said claims, and further asserted that they, the said defendants, had acquired "intervening rights" by reason of having commenced their said acts of infringement prior to the date of application for, or granting of, said reissue patent, which "intervening rights", defendants contended, entitled them to continue such infringement, notwithstanding the granting of the reissue patent, notwithstanding patentee's and plaintiff's total ignorance of the acts of defendants giving rise to said alleged intervening rights.

IV.

That on or about February 11, 1922, a final decree was made herein by the United States District Court for the Southern District of California dismissing the Bill of Complaint.

V.

On appeal to the United States Circuit Court of Appeals for the Ninth Circuit said dismissal was affirmed in a decision rendered on or about February 5, 1923, the sole ground of affirmance being that "appellees had and have such intervening rights as were properly protected by the court below". The said Circuit Court of Appeals found that such "intervening rights" arose for the following reasons:

"The evidence shows that prior to any knowledge on their part of the Keller patent, the appellees had been working on their device, and had made and sold a few of them, but subsequently learned of and became familiar with the original Keller patent, and before proceeding with the manufacture and sale of their own device, and prior to the making of the application for the re-issued Keller patent, they applied to the attorneys who procured the original Keller patent* for information as to whether their device was an infringement upon that of Keller, saying that they did not wish to infringe, and being told that it would not be an infringement, they proceeded with the manufacture and sale of their own on a substantial basis. We, therefore, think it clear that the appellees had and have such intervening rights as were properly protected by the court below. See *Coon* v. *Wilson*, 113 U. S. 268; *Topliff* v. *Topliff*, 145 U. S. 156; *Dunham* v. *Dennison*, 154 U. S. 103, 111; *Auto-Piano Co.* v. *American Player Action Co.*, 222 Fed. 276. The decree of the court below is affirmed."

VI.

In said decision the Circuit Court of Appeals did not overturn the *prima facie* validity of said reissue patent, nor did the Court reject defendants' admission

*(The record shows that at the time defendants solicited the advice of these attorneys, plaintiff Keller had long since discharged said attorneys. Thus, at R. 150, James T. Barkelew, the solicitor who prepared and prosecuted the reissue application, testified that he was retained by plaintiff Keller on or about April 1st, 1919, and that said Keller at that time took the file away from the office of Hazard & Miller, the attorneys who solicited the original Keller patent. At R. 124, defendant Kipper testified that his associate, Gabel, handled the patent investigation, and at R. 153 Gabel testified that he did not discuss the subject of patents with Kipper or anyone else (including Hazard & Miller) until July, 1919, which was subsequent to Keller's application for reissue and after Keller had discharged his first attorneys who had already shown their incompetency through their failure to properly claim the essential features of the Keller invention.)

of infringement of the reissue claims. In fact, the Court's decision treats merely with the three claims of the original patent, and, after intimating that they are not infringed, proceeds to consider the question of "intervening rights". Therefore, for the purposes of this petition, it must be assumed that the reissue patent is valid and its claims infringed, since it is well settled that the Commissioner's decision in granting a reissue patent is not re-examinable in a suit for infringement except in case of a manifest error appearing from the record (*Seymour* v. *Osborne*, 11 Wall. 516; *Topliff* v. *Topliff*, 145 U. S. 156), and further that an admission of infringement by defendants' counsel goes to a question of fact and is binding.

Hence, the only issues presented by this petition have to do solely with a question of law, namely: what constitutes so-called "intervening rights", and what effect, if any, such "intervening rights" have against a valid reissue patent whose claims admittedly are infringed.

VII.

Your petitioners duly filed their petition for rehearing in said Circuit Court of Appeals, which petition was denied on or about March 12, 1923.

VIII.

The questions and propositions of law involved in this case are substantially as follows:

(1) Where an original patent through inadvertence, accident or mistake issues with claims

which do not fully protect the invention as shown and described, and the inventor promptly presents his application for reissue, do "intervening rights" accrue in favor of another, who, during the period between the issuance of the original patent and the application for reissue thereof, commences manufacture of a device which is not an infringement of the claims of the original patent, but admittedly infringes the claims of the reissue patent, the reissue patent being valid as against all others, and there being no question of bad faith or laches on the part of the patentee and those holding under him?

(2) Is there within contemplation of law any such thing as "intervening rights" as against a validly reissued patent accruing in favor of a particular person or persons and not enjoyed by the public at large nor founded on overt acts committed by the patentee or those claiming under him, which acts are such as to create an estoppel? Differently stated, where the alleged "intervening rights" are not founded upon a *dedication to the public*, can an individual possibly acquire such rights in the absence of clear proof of conduct on the part of the patentee amounting to equitable estoppel?

(3) Does not that provision of Section 4916, R. S., to the effect that a reissue patent "shall have the same effect and operation in law on the trial of all actions for causes thereafter arising as if the same had been originally filed in such

corrected form" specifically exclude any and all claims of "intervening rights" based merely upon manufacture, use or sale prior to the date of application for the reissue patent, where the reissue applicant has acted promptly and in good faith in soliciting his reissue patent and without knowledge of the alleged intervening rights?

(4) To what extent do the acts of defendant tending to show good faith in entering upon manufacture or sale apply in a case where the patentee presented his application for reissue promptly and in good faith?

In the instant case the Circuit Court of Appeals appears to be of the opinion that defendants, by consulting a patent solicitor as to infringement of the original patent within six months or so after the issuance of said patent and being advised that they did not infringe, were in a position to claim intervening rights against a valid reissue subsequently granted and containing claims which admittedly were infringed.

Some of the courts hold that if the patentee acts promptly and in good faith in presenting his application for reissue no intervening rights can arise, regardless of the good faith of defendant, since the latter is charged with knowledge of the patentee's right of reissue at any time within two years from the date of the original patent. (*Crown Cork & Seal Co.* v. *Aluminum Stopper Co.*, 108 Fed. 845.)

To the contrary effect is the ruling of the Second Circuit in *Auto-Piano Co.* v. *American Player Action*

Co., 222 Fed. 276, that intervening rights may arise through the mere fact that defendant entered upon manufacture and sale when the only public announcement of complainant's monopoly was the defective and insufficient claims of the original patent.

> (5) Conceding that a patentee, in order to obtain a valid reissue of his patent containing broadened claims, must present his application promptly and satisfy the Commissioner of Patents as to the existence of inadvertence, accident or mistake in connection with the original patent and confine his reissue claims to the same general subject matter as the original claims, all as laid down by this Court in *Topliff* v. *Topliff*, 145 U. S. 156, is such reissue patent subject to any other qualifications which are not applicable to original patents?

All of said questions were duly raised and argued by your petitioners in said District Court and in said Circuit Court of Appeals.

IX.

Concerning the question of "intervening rights" the Circuit Court of Appeals for the Ninth Circuit in the instant case, without finding invalidity or non-infringement of the patent in suit, said:

> "We, therefore, think it clear that the appellees had and have such intervening rights as were properly protected by the court below. See *Coon* v. *Wilson*, 113 U. S. 268; *Topliff* v. *Topliff*, 145

U. S. 156; *Dunham* v. *Dennison*, 154 U. S. 103, 111; *Auto-Piano Co.* v. *American Player Action Co.*, 222 Fed. 276."

X.

The decisions of the Supreme Court above referred to, to-wit, *Coon* v. *Wilson*, 113 U. S. 268; *Topliff* v. *Topliff*, 145 U. S. 156, and *Dunham* v. *Dennison*, 154 U. S. 103, do not sustain the holding of the Court of Appeals in the instant case.

The decision in *Topliff* v. *Topliff* favors your petitioners' contention, since in that case a broadened reissue patent was sustained and no "intervening rights" of any character were decreed.

In *Coon* v. *Wilson* and *Dunham* v. *Dennison* the reissue patents were declared invalid for the reason that they embodied unwarranted changes in the character of the original invention, and the applications for reissue were applied for after the patentees had full knowledge of defendants' devices. No contention is made in the instant case that the reissue is for a different invention or that it was inspired by knowledge of defendants' device.

The decision in the case of *Auto-Piano Co.* v. *American Player Action Co., supra,* is by the Circuit Court of Appeals for the Second Circuit, and, in so far as it relates to "intervening rights" it is at variance with Section 4916, R. S., and the decisions of the Supreme Court. In the Auto-Piano case the Court held, after finding the reissue patent valid and infringed:

"We therefore reach the conclusion that complainant is estopped from claiming infringement *by this particular defendant* in continuing the manufacture and sale which it entered upon while the first reissue was the only public announcement of complainant's alleged monopoly." (Italics ours.)

XI.

It is evident from the language of the Court in the instant case, and likewise in the case of *Auto-Piano Co.* v. *American Player Action Co., supra,* that there is a misapprehension on the part of at least two Circuit Courts of Appeal as to the meaning and effect of so-called "intervening rights". The Supreme Court of the United States has never in any of the many cases affecting reissues held that the mere fact of defendants having commenced manufacture in the interval between the issuance of the original patent and the date of application for reissue (the original patent having inadvertently issued with claims which did not fully protect the invention disclosed therein and the reissue application having been seasonably presented) would invalidate the reissue or confer upon the intervening manufacturer a perpetual and free license to use the invention in definace of the reissue patent in the absence of facts constituting laches on the part of or estoppel against the reissue applicant. On the contrary, the Supreme Court has held:

(a) That the Statute makes a valid reissue enforcible against any subsequent infringement on the part of persons who had lawfully manu-

factured, sold or used the invention in question prior to the *application for* or granting of the reissue. (*Stimpson* v. *West Chester R. Co.*, 4 How. 380, 11 L. Ed. 1020.)

(b) That manufacture, use or sale by others between the granting of the original and the application for reissue does not *per se* adversely affect the validity of the reissue. (*White* v. *Dunbar*, 119 U. S. 47.)

(c) That one who, prior to the date of application for reissue, makes or uses an invention inadequately protected by an original patent, while relieved of accountability for the period prior to the granting of the reissue, nevertheless is accountable for any infringements committed thereafter. (*Abercrombie & Fitch Co.* v. *Baldwin*, 245 U. S. 198.)

XII.

Other Federal courts have held that manufacture, sale or use of the devices in question by the defendant in the interval between the issuance of the original patent and the application for reissue, which devices did not infringe the claims of the original patent, but did infringe the reissue claims, does not relieve defendant of his liability for infringement of the reissue patent. (*Crown Cork & Seal Co.* v. *Aluminum Stopper Co.*, 108 Fed. 845, C. C. A., 4th Cir.; *Albertson* v. *Beckley-Ralston Co.*, 258 Fed. 453; *Howe* v. *Coffield*, 197 Fed. 541, C. C. A., 4th Cir.;

Coffield Motor Washer Co. v. *A. D. Howe Co.*, 172 Fed. 670, and *Weber* v. *Automobile & Accessories Mfg. Co.*, 190 Fed. 189.)

XIII.

And your petitioners aver that the present case is one in which it is proper for this Court to issue a Writ of *Certiorari* for the following reasons, among others:

(1) Because it involves a construction of Section 4916, R. S., particularly that portion to the effect that a reissue patent "shall have the same effect and operation in law on the trial of all actions for causes thereafter arising as if the same had been originally filed in such corrected form". While a somewhat similar provision in the Acts of 1832 and 1836 was considered in the case of *Stimpson* v. *West Chester R. Co., supra*, there has not been, so far as petitioners can ascertain, any decision of this Court construing the aforesaid clause of present Section 4916, R. S.

(2) Because of a misapprehension on the part of various Federal courts as to the meaning and effect of the decisions of the Supreme Court in *Coon* v. *Wilson*, 113 U. S. 268, *Dunham* v. *Dennison*, 154 U. S. 103, and similar cases which held reissue patents invalid where the substantive character rather than the scope of the invention as disclosed in the original patent had been changed in the reissue patent, such changes being

inspired by knowledge of defendant's devices which had previously appeared on the market. Thus the Circuit Court of Appeals for the Seventh Circuit in *General Electric Co.* v. *Richmond Street & I. Ry. Co.*, 178 Fed. 84, held a reissue patent invalid on the sole ground "that the application to recast the claims was made not for the purpose of narrowing the original patent, but rather for the purpose of holding a wider monopoly than could have been built up under the invention as described and disclosed in the original patent", citing, among other authorities, *Coon* v. *Wilson, supra.* The question of existence or non-existence of "intervening rights" was not raised.

The Sixth Circuit held the same way in the case of *Coffield* v. *Fletcher Mfg. Co.*, 167 Fed. 321, but in the later case of *American Automotoneer Co.* v. *Porter*, 232 Fed. 456, the Sixth Circuit overruled its former decision after a complete review of the authorities. The Court stated, however, that the various decisions on this point were impossible of reconciliation.

Examples of cases taking a view different from that of *General Electric Co.* v. *Richmond, supra,* as to the meaning of the Supreme Court's ruling in *Coon* v. *Wilson, supra,* are the Fourth Circuit in *Crown Cork & Seal Co.* v. *Aluminum Stopper Co.*, 108 Fed. 845, where it was said:

"In *Coon* v. *Wilson*, 113 U. S. 268, 5 Sup. Ct.

537, 28 L. Ed. 963, the reissue was not founded on the invention described in the original, but upon an entirely distinct invention. * * *

"That case did not deal with the question whether a patentee can reissue to properly claim the invention exhibited in the original, and included under the statement of invention therein, but with the question whether, under the circumstances there existing, he could properly reissue to embrace an invention that was not so included or exhibited."

Likewise, in *Bertels* v. *Trethaway*, 175 Fed. 971, Judge Archbald said concerning the decision in *Coon* v. *Wilson, supra:*

"Nor is the case in any view an authority that a delay of three months is too long; the question not being one of time, but of the character of the reissue. The difficulty there was that the claims of the reissue, as enlarged to embrace the defendants' device, were not, as they were required to be, expressive of the original invention, but were carried entirely beyond the scope of it, as a comparison of the original specifications with those of the reissue conclusively demonstrated. But by contrast with this in the present instance no change was found necessary, the claims of the reissue being abundantly sustained by the original specifications which were carried forward into it, the inventor in the original having been simply unnecessarily limited in the respect indicated."

As further showing a misapprehension of the Federal courts as to the force and effect of such decisions of the Supreme Court as *Coon* v. *Wilson, supra*, reference is made to the fact that some courts which apparently recognize the patentee's right of reissue to broaden his claims, inject therein the question of

"intervening rights", holding that the gist of the decision in *Coon* v. *Wilson* is that intervening manufacture and sale by others will *invalidate* the patent while other courts hold that such intervening acts will operate as an *estoppel* in favor of particular persons only, while others hold that intervening manufacture or sale neither invalidates the reissue patent nor creates an estoppel. The Sixth Circuit, as shown by the decision in *American Automotoneer Co.* v. *Porter, supra,* and the Circuit Court of Appeals for the District of Columbia, as shown by its decision in *Skinner* v. *Carpenter,* 166 O. G. 1281, would seem to make non-existence of intervening manufacture or sale a condition precedent to the right of reissue, and hold that a reissue granted in the face of such rights is invalid; whereas the Second Circuit, as shown by its decision in *Auto-Piano Co.* v. *American Player Action Co., supra,* and the Ninth Circuit, as shown by its decision in the instant case, hold that intervening manufacture or sale will not invalidate the patent, but will operate as an estoppel in favor of the particular one who so manufactured or sold the invention prior to the patentee's application for reissue. The Fourth Circuit in the case of *Crown Cork & Seal Co. v. Aluminum Stopper Co., supra,* recognizes the rule that mere manufacture or sale by others before the patentee's application for reissue will not of itself affect the validity of the reissue nor bar the patentee's right to an injunction and accounting under the reissue patent against the one claiming "intervening rights".

(3) That the various Federal courts are in conflict as to what facts give rise to so-called "intervening rights", and likewise as to the effect in law of such so-called "intervening rights" where they are found to exist. As an example of such conflict in the Courts of Appeal, compare the decision in the instant case and in the case of *Auto-Piano Co.* v. *American Player Action Co., supra,* with the holding of the Court of Appeals for the Fourth Circuit in *Crown Cork & Seal Co.* v. *Aluminum Stopper Co.,* 108 Fed. 845, wherein defendants claimed "intervening rights" or equitable estoppel against a broadened reissue patent on the ground that they had built up a considerable business and procured the issuance of a patent to themselves (Hall patent) covering certain improvements during the period between the granting of plaintiff's original patent (Painter patent) and the date of application for reissue (seven months), all of which was known to the plaintiff. The Court in rejecting defendant's contentions said:

"The fact that the original patent contained a statement of his invention which covered the subject-matter of the reissued claim, and that a reissue to fully secure the invention disclosed was authorized by law, was sufficient notice that this patent was subject to such right of reissue, which right was liable to be exercised at any time at least within two years." * * *

"Keizer is presumed to have known the law which entitled Painter to a reissue. He was entirely familiar with the Painter inventions. He

took his chances in the lottery of infringement, and has lost, and cannot be heard now to complain that he was misled."

The same Court in *Howe* v. *Coffield*, 197 Fed. 541, under a similar state of facts, again rejected defendant's claims of "intervening rights", saying:

"But nothing which Howe or Ornold did in this matter gained for them anything which could without misuse of language be called rights. In the atmosphere of a court of equity it usually takes longer than 7 months and 16 days for intentional wrongs to ripen into intervening rights."

Examples of conflicting decisions in the District Courts on this point are:

Coffield Motor Washer Co. v. *A. D. Howe Co.*, 172 Fed. 670, N. D. West Virginia;
Ashley v. *Tatum*, 240 Fed. 979, S. D. New York.

In the former case, the Court, after quoting the reissue statute, said:

"Under this statute it follows that novelty dates from the original invention, that those who use or sell after the date of the reissue patent articles covered by it become infringers, although they had lawfully sold them by reason of the omission in the original patent prior to the reissue correcting such omission. *Grant* v. *Raymond*, 6 Pet. 218, 8 L. Ed. 376; *Stimpson* v. *Railroad Co.*, 4 How. 380, 11 L. Ed. 1020; *Agawam Co.* v. *Jordan*, 7 Wall. 583, 609, 19 L. Ed. 177; *Bliss* v. *Brooklyn*, Fed. Cas. No. 1,544; *Carr* v. *Rice*, Fed. Cas. No. 2,440."

In *Ashley* v. *Tatum, supra,* the Court, after finding the reissue patent valid and infringed, said:

> "I can feel no doubt that a business of some importance has been built up by the defendant between the dates of the granting of the original patent and of the reissue, and that consequently intervening rights have arisen within the legal acceptation of the term. Under these circumstances, complainants cannot be allowed to claim 'infringement by this particular defendant in continuing the manufacture and sale which it entered upon while the * * * (original patent) was the only public announcement of complainant's alleged monopoly.' See *Auto-Piano Co.* v. *American Player Action Co.,* 222 Fed. 282, 138 C. C. A. 38."

(4) That the questions presented are of grave importance to the public, as demonstrated by the fact that there are now in force more than 3,000 reissue patents, by far the majority of them being so-called broadened reissues, and, hence susceptible to the same kind of claim of "intervening rights" as characterizes the defense in this case. An examination of the reports for the past year shows that the ratio between the number of reissue patents granted and the number of reissue patents sued upon is ten to one.

(5) The questions of law involved herein have not been passed upon by this Court and they are of sufficient general, national and material importance and interest as to make it necessary that they should be determined by this, the Court of last resort.

Wherefore, your petitioners pray that this Honorable Court will be pleased to grant a Writ of *Certiorari* to the United States Circuit Court of Appeals for the Ninth Circuit to bring up this case to this Honorable Court for such proceedings therein as to this Honorable Court may seem just.

CLARENCE D. KELLER
and
ARTHUR C. LILLIE,
Doing business as Hartford Windshield Company,
By CHAS. E. TOWNSEND,
JAS. E. KELBY,
As Counsel and Attorneys for Petitioners.

WM. A. LOFTUS,
Of Counsel.

State of California, City and County of San Francisco.—ss.

CHARLES E. TOWNSEND, being duly sworn, deposes and says that he is counsel for the petitioners, Clarence D. Keller and Arthur C. Lillie; that he has read the foregoing Petition and that the matters of fact stated therein are true to the best of his knowledge, information and belief, and that in his opinion the foregoing Petition for *Certiorari* is well founded as to matters of fact and as to matters of law.

CHAS. E. TOWNSEND.

Subscribed and sworn to before me this 16th day of April, 1923.

In the Supreme Court

OF THE

United States

CLARENCE D. KELLER and ARTHUR C. LILLIE, Doing Business as HARTFORD WINDSHIELD COMPANY.

Plaintiffs and Petitioners,

vs.

ADAMS-CAMPBELL COMPANY, INC. (a Corporation), T. R. GABEL, A. F. KIPPER, Individually, and A. F. KIPPER, Doing Business as Kipper & Company; HARRY W. HAHN, Doing Business as Harry W. Hahn Manufacturing Company; and AUGUSTINE S. LOCKWOOD, Individually, and AUGUSTINE S. LOCKWOOD, Doing Business as Kozy Wing Auto Supply Company,

Defendants and Respondents.

Brief in Support of Petition for Writ of *Certiorari*.

The questions of law sought here to be reviewed and indicating either conflict among the circuits, or concerning which there is urgent need of authoritative expression, are briefly set out in paragraph VIII of our Petition, *supra*.

So far as the facts are material to the questions of law raised by this Petition, they are as follows:

The patent in suit, known as the Keller Reissue

Patent, is for improvements in windshields, and more particularly what has come to be known as a "windshield wing," that is, an auxiliary windshield which attaches to either side of the main windshield and is adjustable universally in a horizontal direction, so as to deflect wind away from the occupants of the vehicle, or, optionally, in hot weather, to induce a draft of air into the compartment or seat. The original patent was applied for June 14th, 1917, and granted November 12th, 1918. Your petitioner, Keller, commenced manufacture and sale of the device in the City of Los Angeles, State of California, during the summer of 1917 (R. 49) and tried on various occasions to interest plaintiff, Lillie, in taking a license to manufacture and sell the invention. Lillie delayed taking a license until he saw the device winning in popular favor. In the latter part of 1918 (November or December) Lillie acquired a license, and has since continued to manufacture and sell the device, which, according to his testimony, is one of the best selling automobile accessories on the market today (R. 52).

The majority of the defendants are officers or employees of the Adams-Campbell Company, a Los Angeles, California, concern, engaged chiefly in the manufacture of metal specialties (R. 80). Defendant Kipper, who was responsible for the introduction of the alleged infringing structure, made his first model in November or December, 1918 (R. 74), at which time he was familiar with all of the windshield wings on the market, including plaintiffs' (R. 87). For some time thereafter Kipper and one Dick Smith made and sold or gave away a few devices, and some

time in August, 1919, an agreement was made with Adams-Campbell Company to take over the manufacture of the article on a commercial scale (R. 89).

It is not contended by defendants that plaintiffs were aware of defendants' activities until about the time suit was commenced, which was approximately one year after the reissue patent had been granted. The defense of "intervening rights," therefore, is not based upon lapse of time, such as would amount to public dedication of the unclaimed features, nor upon any acts or conduct of plaintiffs which would create an equitable estoppel. Rather the point is made that once a patent issues with defective and insufficient claims which are not infringed by defendant's device, it is beyond the power of the patentee to enjoin the defendant in a suit under a reissue patent, no matter how diligent the patentee may have been in seeking his reissue and regardless of the patentee's good faith in seeking to correct defects which occurred as the result of inadvertence, accident or mistake.

A reading of the full text of the opinion of the Court of Appeals in the instant case shows clearly that the correctness of the Commissioner's action in granting Keller a reissue of his patent is not denied. The file wrapper and contents of the reissue patent appearing in the book of exhibits, at page 13, show that the Commissioner of Patents found that the original patent was inoperative to protect the invention by reason of defective and insufficent claims; that such defects and insufficiencies arose through inadvertence, accident or mistake and without fraudulent or deceptive intention. No testimony nor evidence was

> hold the patentees strictly to the rule of reasonable diligence in making applications for this kind of reissues."

Clearly the foregoing observation had reference to the rights of the public arising after long lapse of time, during which the patentee had remained silent and permitted the public to believe that he had dedicated the unclaimed features of his invention, and such have always been the decisions of the Supreme Court. Lately, however, the Federal courts in some circuits have begun to give the term a different meaning, so that even where a patentee has complied fully with the terms of the reissue statute and has promptly made application for reissue upon discovering the defects and insufficiencies in his original patent, those courts, while holding the reissue patent valid, have found that "intervening rights" exist in favor of a particular defendant, which will operate as a sort of perpetual and free license to relieve that one defendant from liability for infringement for all future time, although the rest of the public may be compelled to respect the reissue patent.

Private vs. Public Intervening Rights.

According to such decisions these private "intervening rights" are not based upon the law of equitable estoppel, but are said to arise because prior to the date of application for reissue, the defendant made, sold or used the device complained of, which device, while not an infringement of the original claims, admittedly infringes the reissue patent. These decisions take no

account as to the patentee's conduct, and, even though his diligence and good faith be beyond question, it has been held by some of the courts that he cannot enforce his reissue patent against one who commenced operations prior to the date of application for reissue.

Thus, the Circuit Court of Appeals for the Second Circuit, in the recent case of *Auto-Piano Co.* v. *American Player Action Co.*, 222 Fed. 276, after finding the reissue patent valid and infringed, held:

> "We therefore reach the conclusion that complainant is estopped from claiming infringement by this particular defendant in continuing the manufacture and sale which it entered upon while the first reissue was the only public announcement of complainant's alleged monopoly."

The Circuit Court of Appeals for the Ninth Circuit in the instant case cited *Auto-Piano Co.* v. *American Player Action Co., supra,* as if it were established law and proceeded to hold that "intervening rights" of a private and personal nature could be acquired by defendant through the mere fact of his having commenced operations prior to the date of application for reissue.

Decisions of the Supreme Court in Cases of Reissue Where "Intervening Rights" Were Asserted by Way of Defense.

Reissue patents were first authorized by the Act of 1832. Prior to that time the Supreme Court had recognized the right of a patentee to reissue his patent for the unexpired term where the original patent had

been defective or insufficient. (*Grant* v. *Raymond*, 6 Peters, 217.) In the last-named case Chief Justice Marshall said:

> "It has been urged that the public was put into possession of the machine by the open sale and use of it under the defective specification, and cannot be deprived of it by the grant of a new patent. The machine is no longer the subject of a patent.
>
> "This would be perfectly true if the second patent could be considered as independent of the first. But it is in no respect so considered. The communication of the discovery to the public has been made in pursuance of law, with the intent to exercise a privilege which is the consideration paid by the public for the future use of the machine. If, by an innocent mistake, the instrument introduced to secure this privilege fails in its object, the public ought not to avail itself of this mistake, and to appropriate the discovery without paying the stipulated consideration. The attempt would be disreputable in an individual, and a court of equity might interpose to restrain him."

The Act of 1832 specifically provided for reissues and contained the following proviso:

> "No public use or privilege of the invention so patented, derived from or after the grant of the original patent, either under any special license of the inventor, or without the consent of the patentee that there shall be a free public use thereof, shall, in any manner, prejudice his right of recovery for any use or violation of his invention, after the grant of such new patent as aforesaid."

Stimpson v. *Westchester Railway Co.*, 4 How. 380, was a case of a reissue under the Act of 1832. In

that case Justice McLean, in construing the above-quoted provision of the statute, said:

> "The above proviso would seem to be susceptible of but one construction; and that is, that the patentee may sustain an action 'for any use or violation of his invention after the grant of the new patent.' Now, it is plain that no prior use of the defective patent can authorize the use of the invention after the emanation of the renewed patent under the above section. To give to the patentee the fruits of his invention was the object of the provision; and this object would be defeated if a right could be founded on a use subsequent to the original patent and prior to the renewed one."

Moreover, Justice McLean went into a consideration of the corresponding Act of 1836, which, in all important respects, is identical with present Section 4916, R. S. The Court said:

> "The thirteenth section of the Act of the 4th of July, 1836, which remodeled the patent law in this respect, made no material change in the Act of 1832. The words in the latter act are: 'And the patent, so reissued, together with the corrected description and specification, shall have the same effect and operation in law, on the trial of all actions hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form, before the issuing out of the original patent.' Now, any person using an invention protected by a renewed patent subsequently to the date of this act is guilty of an infringement, however long he may have used the same after the date of the defective and surrendered patent."

Battin et al. v. *Taggert,* 17 How. 73, dealt with a

reissue under the Act of 1836. In that case the trial court had instructed the jury that there were two reasons which appeared to bar the plaintiff's right of recovery, namely:

> "1. That a description by the applicant for a patent of a machine or a part of a machine, in his specification, unaccompanied by notice that he has rights in it as inventor, that he desires to secure title to it as patentee, is a dedication of it to the public.
>
> "2. That such a dedication cannot be revoked, after the machine has passed into public use, either by surrender and reissue, or otherwise."

Justice McLean, speaking for the Court, held that such instructions constituted error, saying:

> "The above instructions, we think, were erroneous.
>
> "Whether the defect be in the specifications or in the claim, under the 13th section above cited, the patentee may surrender his patent, and, by an amended specification or claim, cure the defect. * * * By the defects provided for in the statute, nothing passes to the public from the specifications or claims, within the scope of the patentee's invention. And this may be ascertained by the language he uses."

The next case of importance dealing with reissues is the oft cited one of *Miller* v. *Bridgeport Brass Co., supra,* which dealt with a reissue under the Act of 1870, being the statute at present in force. In this case Justice Bradley said, concerning a patent which had been twice reissued, the second one sixteen years after the date of the original:

> "The granting of a reissue for such a purpose,

> after an unreasonable delay, is clearly an abuse of the power to grant reissues, and may justly be declared illegal and void. It will not do for the patentee to wait until other inventors have produced new forms of improvement, and then, with the new light thus acquired, under pretense of inadvertence and mistake, apply for such an enlargement of his claim as to make it embrace these new forms. Such a process of expansion carried on indefinitely, without regard to lapse of time, would operate most unjustly against the public, and is totally unauthorized by the law. In such a case, even he who has rights, and sleeps upon them, justly loses them."

In this case it was suggested by the Court that a delay of more than two years would raise a presumption of abandonment in favor of the public. Not a word is said about "intervening rights" in favor of an individual. The intent of this decision is that unreasonable delay or changing the substantive character of the original invention will operate to invalidate the reissue.

In conformity with the law expressed in *Miller* v. *Bridgeport Brass Co., supra,* the Supreme Court, in *Coon* v. *Wilson,* 113 U. S. 268, declared a reissue patent invalid, which, although applied for within three or four months from the date of the original patent, was unwarrantably altered to cover a different invention from that disclosed in the original patent. A further factor in this case was that the device sought to be suppressed was the invention of another and had come to the notice of the patentee before he applied for his reissue. In other words, the reissue patent was not for the same invention as covered by the original

patent and the Court held that the Commissioner erred in finding that any alleged defects in the original patent sought to be corrected arose through inadvertence, accident or mistake.

A similar state of facts was presented in *Parker* v. *Yale*, 123 U. S. 87. In both of these cases defendants had brought their devices on to the market before the reissue was applied for and some of the Federal courts seem to regard this as the turning point of the decisions. However, it is clear from a full consideration of these decisions that the fact of defendants' devices having been on the market prior to the application for reissue was merely referred to as tending to show bad faith on the part of the reissue applicant and not as creating any "intervening rights." This is made clear by the case of *White* v. *Dunbar*, 119 U. S. 47, wherein Justice Bradley said:

> "The circumstance that other improvements and inventions, made after the issue of a patent, are often sought to be suppressed or appropriated by an unauthorized reissue, has sometimes been referred to for the purpose of illustrating the evil consequences of granting such reissues; but it adds nothing to their illegality. That is deduced from general principles of law, as applied to the statutes authorizing reissues and affecting the rights of the government and the public."

The next important case dealing with reissues was *Topliff* v. *Topliff*, 145 U. S. 156. In that case Justice Brown referred to most of the earlier decisions bearing on reissue patents and summarized the holdings of this Court as follows:

> "From this summary of the authorities it may

be regarded as the settled rule of this court that the power to reissue may be exercised when the patent is inoperative by reason of the fact that the specification as originally drawn was defective or insufficient, or the claims were narrower than the actual invention of the patentee, provided the error has arisen from inadvertence or mistake, and the patentee is guilty of no fraud or deception; but that such reissues are subject to the following qualifications:

"First. That it shall be for the same invention as the original patent, as such invention appears from the specification and claims of such original.

"Second. That due diligence must be exercised in discovering the mistake in the original patent, and that, if it be sought for the purpose of enlarging the claim, the lapse of two years will ordinarily, though not always, be treated as evidence of an abandonment of the new matter to the public to the same extent that a failure by the inventor to apply for a patent within two years from the public use or sale of his invention is regarded by the statute as conclusive evidence of an abandonment of the patent to the public.

"Third. That this court will not review the decision of the commissioner upon the question of inadvertence, accident, or mistake, unless the matter is manifest from the record; but that the question whether the application was made within a reasonable time is, in most, if not in all such cases, a question of law for the court."

Throughout a very complete review of the authorities by this Court in the last-mentioned case no reference is made whatever to any such thing as "intervening rights" in favor of an individual who entered the domain of the patentee before the public was justly entitled to rely upon a dedication of the unclaimed features of the original patent.

Since *Topliff* v. *Topliff, supra,* the Supreme Court has uniformly followed the principles there enunciated, sustaining as valid broadened reissues which were not unreasonably delayed or which did not change the fundamental character of the original invention. The case of *Dunham* v. *Dennison,* 154 U. S. 103, cited by the Court of Appeals in the instant case, is an example of a reissue covering an invention different not only in scope but in substantive character from the original and inspired wholly by knowledge on the part of the reissue applicant of defendant's product.

The more recent case of *Abercrombie & Fitch Co.* v. *Baldwin,* 245 U. S. 198, shows quite conclusively that where the reissue is a valid one, there is no such thing as "intervening rights" which will operate to relieve an individual from liability for infringement committed after the reissue has been granted. As said by Justice McKenna in that case:

> "To the contention that the Justrite Company, the manufacturing defendant, acquired rights before the reissue, we again may interpose the reasoning and conclusion of District Judge Mayer and their affirmance by the circuit court of appeals. The learned judge said: 'It will be remembered that this company entered the field with its lamp at a time when the validity and scope of the Baldwin patent were still unquestioned, and when, after some five years of capable effort, the Baldwin lamp had created an extensive market. The Justrite Company took its chances, and, in view of the necessities of the situation, it is relieved of all accountability for

> the period prior to the granting of the reissue patent; but when the reissue was granted, the Justrite Company again took its chances.'"

Unfortunately, this Court did not state the reasons underlying this rule, which, taken with the statement therein to the effect that "the original patent did not need the exposition of the reissue", has led to considerable misapprehension on the part of both bench and bar as to the effect of this decision. Thus defendants' counsel in his brief both in the lower court and on appeal urged that your Honors' decision in the Abercrombie case was intended to apply only to narrowed reissues, and this view apparently was adopted by the Court of Appeals.

The Unsettled Condition of the Law of "Intervening Rights".

Formerly the various Circuit Courts were uniform in their interpretation of the meaning and effect of "intervening rights" as applied to reissue patents. Thus, in the case of *Carr* v. *Rice*, decided in 1856 in the Southern District of New York, 1 Fish. Pat. Cas. 198, 5 Fed. Cas. 2440, the Court said in its instructions to the jury:

> "The point is made in behalf of the defendant —in diminution, if not entire discharge of damages—that when he set up his machine, it was not covered by the plaintiff's patent.
>
> "This suit is upon a reissue of the patent originally granted. The patentees, finding their specification was not sufficiently explicit to secure them the whole of their invention, surrendered their patent to the Patent Office, and had granted

them a reissue, with an amended specification, embracing their entire discovery. Before that was done, the defendant's machine was put up; and as, at that time, he was not liable to an action, therefore it is insisted, he can not be made so, by a subsequent alteration of the specification and patent, without his consent.

"This defense can not prevail, if it be found by the jury that the patentees were the inventors of all that is claimed under the reissued patent, and only failed reaping the benefit of their invention for the want of the perfect description of it, in their first patent, which is now supplied them, in the amended and reissued one. They and their assignees became the owners of the discovery, with a perfect title, and the defendant is answerable for any unlicensed use of the machine since that time. A person purchasing property, against the right of another, when the owner was without evidence of his title, can not hold or use it, after the evidence of his superior right is acquired by the real owner. Patent interests are not distinguishable, in this respect, from other kinds of property."

That the various Circuit Courts followed this doctrine uniformly for a considerable period of time is shown by the following cases:

Howe v. *Williams*, 12 Fed. Cas. No. 6,778, 2 Fish. Pat. Cas. 395;
Hussey v. *Bradley*, 12 Fed. Cas. No. 6,946, 2 Fish. Pat. Cas. 362;
Goodyear v. *Day*, 10 Fed. Cas. No. 5,566;
Bloomer v. *Stolley*, 3 Fed. Cas. 1,559;
Bliss v. *Brooklyn*, 3 Fed. Cas. No. 1,544, 4 Fish. Pat. Cas. 596;
McWilliams v. *Blundell*, 11 Fed. 419.

Also the Supreme Court in the cases of *Stimpson* v.

West Chester Railway Co., supra, and *Battin* v. *Taggert, supra,* affirmed this doctrine.

Then came the Supreme Court decision in the case of *Chicago & N. W. R. Co.* v. *Sayles,* 97 U. S. 554, which dealt not with a reissue patent but an original patent. It was said in the opinion by Justice Bradley that the application as originally filed was defective and insufficient and lay dormant in the Patent Office for a period of five years, whereupon it was purchased by a third party and considerably modified and changed. After finding non-infringement of the claims in suit Justice Bradley made the following observation, which was entirely *obiter:*

> "The law does not permit such enlargements of an original specification, which would interfere with other inventors who have entered the field in the meantime, any more than it does in the case of re-issues of patents previously granted. Courts should regard with jealousy and disfavor any attempts to enlarge the scope of an application once filed, or of a patent once granted, the effect of which would be to enable the patentee to appropriate other inventions made prior to such alteration, or to appropriate that which has, in the meantime, gone into public use."

This decision was followed shortly by the decisions in *Mahn* v. *Harwood* and *Coon* v. *Wilson,* already referred to. From then on nearly every defendant in a suit on a reissue patent raised the defense of "intervening rights", until now the law has become so uncertain that even such Courts of Appeal as are most frequently called upon to decide patent cases find it impossible to reconcile the decisions. As an

example of this state of confusion of the law petitioners refer to the recent case of *American Automotoneer Co.* v. *Porter*, 232 Fed. 456, C. C. A. 6th Cir., wherein Judge Dennison reviewed the decisions on this point at considerable length. As showing the difficulties which the question presented, we quote the following from the opinion in that case:

> "The reissue statute fixes no limit of time within which the application must be made, and does not specify that rights, accruing to the public or to individuals, after the first issue and before the application for reissue, shall affect the latter right. *Miller* v. *Brass Co.*, 104 U. S., at page 350, 26 L. Ed. 783 (See Walker 4th Ed. #226), which first declared this additional condition, did not elaborate the foundation reason for so doing, but we think it must be assumed that the principle of estoppel (perhaps in favor of the public generally) is at the bottom of the rule. By the issue of a patent, the inventor dedicates to the public everything which he does not claim as his monopoly. Upon this dedication, the public has a right to rely, and if members of the public devote time and money to the manufacture of a device which the inventor has so dedicated, or to the devising, inventing and patenting of structures which embody such a feature, it may be presumed that this is done upon the faith of the dedication; and so the inventor may not be permitted thereafter to enlarge his monopoly to the prejudice of these new rights—even though, except for them, the reissue would be permissible. The settled doctrine has come to be that from a delay of more than two years, and in the absence of any sufficient contrary evidence, these fatal intervening rights (public or private) will be presumed; in the presence of less delay, they must be proved. But see *White* v. *Dunbar*, 119

U. S. 47, 52, 7 Sup. Ct. 72, 30 L. Ed. 303, and *Milloy Co.* v. *Thompson Co.* (C. C. A. 6) 148 Fed. 843, 847, 78 C. C. A. 533."

From the foregoing it will be seen that the Court was in doubt as to whether the so-called "intervening rights" accrued to the public in general, or merely in favor of those individuals who acted upon the assumption that the patentee had dedicated the unclaimed features of his invention. Further the decision fails to point out what character of proof would be required to show intervening rights in case of less delay than two years, although it seems clear that the Court intended that the burden of establishing such "intervening rights" should be on defendant, as it is in other cases of trespass where estoppel is claimed. Judge Rose in *Weber* v. *Auto & Accessories Co.*, 190 Fed. 189, held that "intervening rights" in such cases must be proved *beyond reasonable doubt.*

The Circuit Court of Appeals for the District of Columbia in the case of *Skinner v. Carpenter*, 166 Official Gaz. U. S. Pat. Off. 1281, went so far as to say:

> "It is well-settled law that to warrant the valid reissue of a patent there must not only have been a mistake by the patentee, with no want of reasonable diligence in its discovery, but also that no third person has in the meantime acquired the right to manufacture and sell what the patentee had failed to claim. (*Coon* v. *Wilson*, 113 U. S. 268, 277; *Farmers' Friend Co.* v. *Challenge Co.*, 128 U. S. 506, 510; *Topliff* v. *Topliff*, 145 U. S. 156, 171.)"

The Second Circuit, as also the Ninth, hold that

private "intervening rights" can be acquired against a valid reissue seasonably applied for. (*Auto-Piano Co.* v. *American Player Action Co., supra.*)

The Fourth Circuit lays down the rule that one who appropriates the unclaimed features of a patent prior to the patentee's application for reissue is *charged with knowledge of the right of the patentee to so reissue his patent within a reasonable time,* and hence no "intervening rights" can arise in case of a prompt reissue. Thus, in *Crown Cork & Seal Co.* v. *Aluminum Stopper Co.,* 108 Fed. 845, the Court of Appeals for the Fourth Circuit said:

> "The fact that the original patent contained a statement of his invention which covered the subject-matter of the reissued claim, and that a reissue to fully secure the invention disclosed was authorized by law, was sufficient notice that this patent was subject to such right of reissue, which right was liable to be exercised at any time at least within two years."

See also *Howe* v. *Coffield,* 197 Fed. 541, by the same court. A similar holding was made by the District Court of Illinois in the case of *Albertson* v. *Beckley-Ralston Co.,* 258 Fed. 453. A sort of middle ground was taken by the Circuit Court for the Middle District of Pennsylvania in the case of *Bertels* v. *Trethaway,* 175 Fed. 971, where the judge assigned as a reason for refusing to recognize "intervening rights" claimed to have arisen during a period of thirteen months that defendants were warned soon after the original patent was granted that they were invading plaintiff's domain. The Court said:

"It might be different, if no such warning was given, the failure of the complainants to assert their right to a reissue for a year or more after knowledge of the manufacture and use by others of a form of device apparently not covered by the invention as patented being calculated to mislead them into the belief that it was not thought to be within the scope of it. But where, as here, infringement of the original patent has been directly and promptly brought home to the parties, and the description of the invention, as set forth in the original is broad enough to sustain the reissue, being affected with notice of the right to enlarge it which is so conveyed, and at the same time admonished that they are trespassing upon it, it cannot be claimed under these circumstances that they were mislead to their hurt by the inventor's inaction, the application for the reissue being made within a reasonable time thereafter. *Crown Cork & Seal Co.* v. *Aluminum Stopper Co.*, 108 Fed. 845, 48 C. C. A. 72."

This case was reversed, but on grounds other than "intervening rights".

It will be seen that the last named decision in effect places upon the patentee the burden of disproving estoppel, whereas the law is well settled that one claiming an estoppel in case of trespass must assume the burden of proof. In other words, it must be shown by the trespasser that the owner of the property in question stood by and watched the other make improvements thereon, that the latter had good reason to believe that he was the owner of the property in question and that the former failed and neglected to inform the other of his own title. (*Steel et al.* v. *St. Louis Smelting & Refining Co.*, 106 U. S. 447). However, this question does not arise in the instant

case, since the record shows that defendants' operations, if any, prior to Keller's application for reissue were minor and of an experimental character, and no contention is made that plaintiffs had notice of the same until after the reissue was granted.

In conclusion, it is clear that sharp conflict exists among the several courts as to the law applicable to broadened reissue patents, and particularly so when the defense of "intervening rights" is raised. These differing and widely varying rules are applied as follows:

(a) Cases like *General Electric Co.* v. *Richmond Street & I. Ry. Co.*, 178 Fed. 84, which hold that failure of the solicitor through inadvertence, accident or mistake to secure the full measure of protection to which the patentee is entitled in his original patent is no ground for reissue, and hence any reissue, whose primary purpose is to make the claims broader, is invalid independently of the existence or non-existence of "intervening rights" or long delay.

(b) Cases like *American Automotoneer Co.* v. *Porter*, 232 Fed. 456, which hold that reissues, whose sole purpose is to broaden the claims, are permissible, but are invalid where it is shown that "intervening rights" have arisen regardless of lapse of time.

(c) Cases like *Auto-Piano Co.* v. *American Player Action Co.*, 222 Fed. 276, which hold that broadened reissues are enforceable and valid against all, except those persons who can show intervening manufacture or sale; and

(d) Cases like *Crown Cork & Seal Co.* v. *Aluminum Stopper Co.*, 108 Fed. 845, which recognize the right of the patentee to reissue and thereby secure broader claims, and hold that the public is charged with knowledge of this fact and hence one commencing manufacture or sale

within two years from the date of granting of the original patent can claim no "intervening rights."

In view of the many reissue patents in force at the present time and the vast interests which they represent, it would seem to be the duty of this Honorable Court to clarify the law as regards the subject of "intervening rights".

CHAS. E. TOWNSEND,
JAMES E. KELBY,
Counsel for Petitioners.

NOTICE

To Frank L. A. Graham, Esq., and Ford W. Harris, Esq., Counsel for Respondents, Adams-Campbell Company, Inc., T. R. Gabel, A. F. Kipper, Harry W. Hahn and Augustine S. Lockwood:

You will please take notice that on the 14th day of May, 1923, at 12 o'clock, or as soon thereafter as counsel can be heard, the foregoing petition and accompanying brief will be submitted to the Supreme Court of the United States at its usual place of holding its session in the Capitol at Washington, D. C., for its consideration and action, at which time and place you will please take such action in the premises as you may be advised.

CHAS. E. TOWNSEND,
JAMES E. KELBY,
Counsel for Petitioners.

WM. A. LOFTUS,
Of Counsel.

Office Supreme Court, U. S.
FILED
JAN 30 1924
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

Number 315.

CLARENCE D. KELLER and ARTHUR C. LILLIE, doing business as HARTFORD WINDSHIELD COMPANY,

Plaintiffs and Petitioners,

vs.

ADAMS-CAMPBELL COMPANY, INC. (a Corporation), T. R. GABEL, A. F. KIPPER, individually, and A. F. KIPPER, doing business as KIPPER & COMPANY; HARRY W. HAHN, doing business as HARRY W. HAHN MANUFACTURING COMPANY, and AUGUSTINE S. LOCKWOOD, individually, and AUGUSTINE S. LOCKWOOD, doing business as KOZY WING AUTO SUPPLY COMPANY,

Defendants and Respondents.

BRIEF AND ARGUMENT ON BEHALF OF PETITIONERS ON FINAL HEARING.

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Defendants and Respondents.

BRIEF FOR PETITIONERS.

FOREWORD.

This brief is intended to supplement the Petition and Brief already on file, and to state only such

essential facts and additional reasons as appear necessary for a ready and full consideration of the questions immediately involved.

STATEMENT OF THE CASE.

This is a patent case relating to improvements in auxiliary windshields or side-wings.

It comes before this Court on writ of certiorari granted on the petition of Keller and Lillie, plaintiffs below, and directed to the Circuit Court of Appeals for the Ninth Circuit.

The case originated in the District Court of the United States for the Southern District of California, on a charge of infringement of Claims 1, 2, 8, 17, 21 and 23 of Reissue Letters Patent No. 14,919, granted July 20, 1920, on an application filed by Clarence D. Keller.

The bill of complaint was filed on or about July 1, 1921, and the case was tried in open court. At the trial of said suit defendants admitted infringement of certain claims of said reissue patent (R. 154), but denied that said claims were valid, because of alleged "intervening rights" arising out of the fact that defendants claimed to have commenced the manufacture complained of between the date of issuance of the original patent, on November 12th, 1918, and May 18th, 1919, the date of application for the reissue patent in suit.

The trial judge found for the defendants, on the ground of "intervening rights", although it was no-

where shown that notice was brought home to plaintiffs or that plaintiffs had any knowledge of defendants' activity until long *after* the filing of the *reissue application*, and ordered that the bill be dismissed. The trial judge, in an oral opinion (R. 158 to R. 161), assigned as reason for dismissing the bill:

> "Without further discussion, I think the defendants occupy the position of one who has intervening rights, and under those circumstances I think the plaintiffs are not entitled to a reissue of the patent as against the defendants."

On appeal by plaintiffs to the Circuit Court of Appeals for the Ninth Circuit, the decree of the lower court was affirmed in a written opinion dated February 5, 1923 (287 Fed. 838), in which the sole ground of affirmance was "that the appellees had and have such intervening rights as were properly protected by the court below (R. 175).

The Court of Appeals did not find the reissue patent in suit invalid, nor was there any finding of non-infringement of the claims thereof. The grounds of affirmance are quoted on page 2 of our Petition.

After plaintiffs' request for rehearing had been denied, these petitioners filed in this Court a petition for a writ of certiorari, directed to the Circuit Court of Appeals for the Ninth Circuit, and the Circuit Court of Appeals made an order staying the issuance of its mandate, pending the ruling of this Court

on the petition for the writ of certiorari. The petition for the writ of certiorari was granted and the writ was issued June 23, 1923.

OUTLINE OF ARGUMENT.

From the foregoing it is apparent that this case as *a patent case* presents the unusual aspect of involving a patent which has been before only one Court of Appeals. But it is here not primarily as a patent case, but because of a *conflict of decision between the circuits* as to proper interpretation of an underlying principle of law affecting *all* reissue patents, i. e., the so-called doctrine of "Intervening Rights".

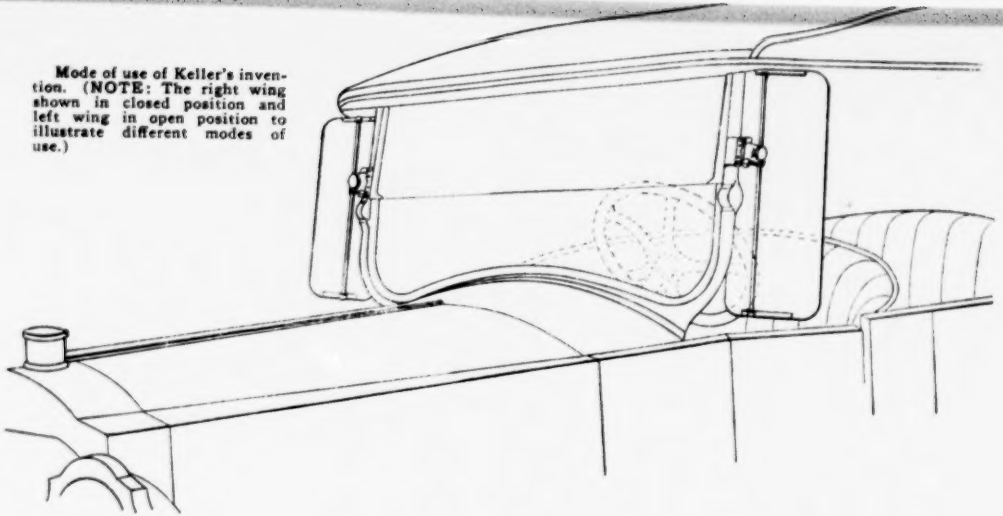
No questions of "infringement", "utility" or "lack of invention" are at issue except as incidental matters, since infringement was admitted (R. 154):

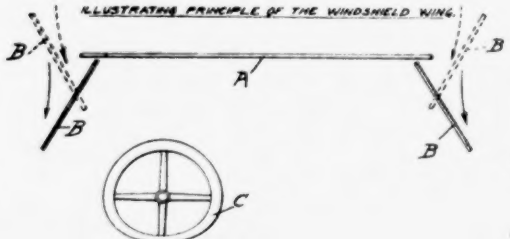
> "MR. HARRIS. If your Honor please, I can expedite Mr. Townsend's argument a little. We say we do not deny claims 8, 17, 21 and 23; 22 and 23 are infringed if they are valid. * * * he does not need to take the time of the Court applying the claims to that structure.
>
> MR. TOWNSEND. We accept the admission."

An admission of infringement by defendants' counsel goes to a question of fact and is binding (*Oscanyon* v. *Winchester*, 103 U. S. 261).

Defendants concede utility by their conduct in the use of the device (*Dowagiac Mfg. Co.* v. *Minne-*

Mode of use of Keller's invention. (NOTE: The right wing shown in closed position and left wing in open position to illustrate different modes of use.)





LEGEND.-
A- WINDSHIELD.
B- WINGS.
C- STEERING WHEEL.
ARROWS SHOW WIND CURRENTS ACCORDING TO POSITION OF WINGS.

sota Moline Plow Co., 118 Fed. 136; *National Hollow B. B. Co.* v. *Interchangeable B. B. Co.*, 106 Fed. 199).

No serious contention was made that there was anything in the prior art even remotely suggesting the invention in controversy.

For the purposes of this hearing it must be assumed that the reissue patent is valid and its claims infringed, since it is well settled that the Commissioner's decision in granting a reissue patent is not re-examinable in a suit for infringement except in case of a manifest error appearing from the record (*Seymour* v. *Osborne*, 11 Wall. 516; *Topliff* v. *Topliff*, 145 U. S. 156).

QUESTIONS IN THE CASE.

The issues presented by this writ have to do solely with questions of law, namely: (1) What constitutes so-called "intervening rights"; (2) whether or not such "intervening rights" can arise against a valid reissue patent whose claims admittedly are infringed and which reissue was applied for in good faith and without knowledge on the part of applicant of defendant's device, and (3) whether these "rights" accrue only in favor of a particular defendant or in favor of the public at large. More specifically, the questions and propositions involved are set out in paragraph VII, pages 5 to 8 of the petition for the writ.

The various Circuit Courts of Appeal and the District Courts differ widely in their decisions on these questions of law and as to the application of the law to similar states of facts. This conflict was pointed out in our petition and brief for this writ.

The Invention and the Patent in Suit.

The patent in suit (Keller Reissue No. 14,919) appears in the volume of printed exhibits at page 13.

Plaintiffs' patented commercial structure is in evidence as Plaintiffs' Exhibit "3".

Plaintiffs' Windshield Exhibit "4" is admitted to accord with the Keller patent in suit (R. 58-59).

The original Keller patent was applied for June 14, 1917, and issued November 12, 1918. The reissue application was executed at Los Angeles, California, on May 16, 1919, filed May 22, 1919. The elapsed period between the date of the original patent and the filing of the reissue is six months, ten days.

This is an unusually short interval, particularly for Pacific Coast patentees. Judge Mayer, in the case of *Iowa Washing Machine Co.* v. *Montgomery Ward*, 227 Fed. 1004, 1006, in sustaining a reissue patent applied for *eight months* after the date of the original, said:

> "With a promptness that is greater than we ordinarily find in reissue cases, the patentees, after they had obtained proper advice, applied for a reissue."

The invention involves auxiliary windshields, which have become known to the trade as "windshield wings" and are adapted to be arranged in pairs attached at either side of the main windshield of an automobile, and adjustable universally in a horizontal direction, so as to deflect wind away from the occupants of the vehicle, or, optionally, in hot weather to direct the drafts of air into the compartment or seat. (See cut, opposite side.) These little devices are not only highly useful, but they are ornamental and add to the appearance of the car.

The evidence shows beyond question both the novelty and utility of the device and its instant and favorable reception by the public as soon as Keller put them on the market. Nothing like these windshields had ever been known to the trade before, and it appears that they filled a long-felt want.

Whether we call the invention a pioneer or not, such a finding is not essential to the merits of the case. Unquestionably Keller's invention was an "invention" within the meaning of the statute, and the tribute of imitation has been paid Keller by these defendants. Indeed, their infringement has been both deliberate and persistent.

As said by this Court recently in the case of *Eibel Process Co.* v. *Minnesota and Ontario Paper Co.*, No. 2178, October term, 1922:

> "His (Eibel's) was *not a pioneer patent*, creating a new art, but a patent which is only an improvement on an old machine may be very meritorious and entitled to *liberal treatment*.

> Indeed, when one notes the crude working of machines of famous pioneer inventions and discoveries, and compares them with the modern machines and processes, exemplifying the principle of the pioneer discovery, one hesitates in the division of credit between the original inventor and the improvers, and certainly finds no reason to withhold from the really meritorius improver the application of the rule *'ut res magis valeat quam pereat,'* which has been sustained in so many cases in this Court." (Italics ours.)

There can be no denying that Keller's patent discloses invention of real merit, and that the article, although a more or less modest one, is novel and highly useful.

So far as the record shows, no one prior to Keller's invention had ever thought of an auxiliary windshield or wing for an ordinary windshield of an automobile. While it probably was well known to all motorists that the ordinary windshield did not offer satisfactory protection to the occupants of the front seat, it apparently was taken for granted for many years that there was no way of overcoming this except by increasing the width of the windshield, which, of course, would be impractical and dangerous. With the ordinary windshield, one riding in the front seat obtains protection from the wind so far as the forward portion of his body and head are concerned, but the wind sweeping around the end of the windshield curves inwardly and

strikes the occupant at his back and neck. With the wings or auxiliary shields of the patent in suit there is a slight increase in the width of the windshield, but more important still is the fact that the wings or auxiliary shields incline rearwardly in such a manner as to prevent these drafts or currents from curving in and striking the occupants. The device, instead of detracting from the appearance of the vehicle, rather lends attraction thereto, and its highly practical features are so well recognized that it is the exception rather than the rule to find an open type of automobile today, particularly the higher priced cars, not equipped with these wings or auxiliary windshields.

The design of plaintiffs' mounting, while apparently simple, utilizing, as it does, an unframed glass panel and a double-jointed hinge (more or less common in other arts), nevertheless created problems requiring the exercise of considerable ingenuity. Plaintiffs' expert, Barkelew, pointed out some of the problems at R. 59, as follows:

> "It would seem apparent that a successful commercial windshield wing must possess the following characteristics:
>
> "1. Artistic and harmonious appearance and design conformable with the correct appearance and design of the automobile to which it is to be applied, having regard to shape, size and slant of windshield, height of top, etc. Unframed glass is of course preferable to heavy metal frame which latter would be bulky and un-

sightly and obstruct the view. Unframed glass with appropriate clamping means allows for glasses of different outline and shape to conform to the lines of the car.

"2. Unobstructive to the vision of the driver. This entails the use of a minimum of metal.

"3. Adjustability to car whether curtained or open.

"4. Adjustability to deflect the wind away from the occupants of the car as in cold, windy weather, or into the car and upon the occupants as in hot weather.

"(a) Universality of movement.

"(b) Quickness of adjustment.

"5. Durability and safety factor.

"6. In employing an unframed glass there must be the provision of an appropriate clamp means between which two opposed surfaces of glass may be embraced, either the glass must be embraced edgewise, or flat surfacewise."

The record shows (pages 50 and 51) that the plaintiff Lillie, doing business as the Hartford Windshield Company, first had his attention called to the Keller invention by Mr. Keller in July, 1917, when Mr. Keller (who was a poor man with a small windshield shop in the city of Los Angeles) sought to interest Mr. Lillie in these windshield wings. Mr. Lillie, who was an experienced automobile accessory man and a manufacturer of windshields, was not at that time impressed with the invention as a selling proposition, due to its radical novelty and because he thought with the mirrors and spot lights already on the windshield posts that this addi-

tional incumbrance would deter the public from taking to windshield wings. However, Mr. Keller persevered and in spite of his limited means succeeded in getting his wings gradually introduced, and as Mr. Lillie says (R. 52), "it began to dawn on me that the thing had merit in the eyes of the public".

Consequently, in the latter part of 1918 Lillie and Keller entered into an arrangement by which the exploitation of the winshield wings was extensively begun.

Continuing, Mr. Lillie says (R. 53):

> "The demand for this product has been very large. It grew from nothing, just as I have said, Mr. Keller experimenting with it and being laughed at, until it is really one of the best-selling automobile accessories there is on the market today."

So-Called Prior Art.

Prior art as such is strikingly absent. Defendants introduced a number of patents but without explanation. Most of these patents were citations by the Patent Office in connection with the examination of the Keller patent, so nothing really new was added to the record.

Concerning the several patents introduced by defendants, it is noted that defendants consider the French patent to Moreau, No. 460,778 (Defendants' Exhibit "Z-7") as their one best reference (R. 138).

This French patent shows a triple mirror "espe-

cially designed to be fixed on a window casing permitting a convenient movement of said mirror which is held in such a way that the side panels will never open or close except by manual effort because inclination of the central panel is prevented." Plaintiff's expert, James T. Barkelew, in explaning the operation of this French patented mirror said: "This device has only a single movement about a single vertical axis." (R. 149.)

Best Reference Rule.

Applying the rule recognized by the Circuit Court of Appeals of the Second Circuit in *Waterbury Buckle Co.* v. *Aston*, 183 Fed. 120, it will be necessary to examine only this French patent.

Although, as stated above, defendants simply introduced this mass of patents without explanation, plaintiffs assumed the burden of explanation as far as seemed necessary to prevent the Court being misled, and at pages 138 and following of the Record, plaintiffs' expert, Mr. Barkelew's, comments will be found.

Defendants' Device.

Defendants' infringing device is in evidence as Plaintiffs' Exhibit 2.

Defendants' and plaintiffs' devices each embody a combination including:

(1) An unframed glass;

(2) A pivot rod near the median line of the glass;

(3) A swinging link to support the pivot rod;

(4) A pivotal support for the swinging link;

(5) A clamp extending from the pivotal support to the windshield base and detachably fastened to the latter;

(6) Unitary means for tightening and loosening the joints which permit both pivotal and orbital movements of the glass wings.

Furthermore, plaintiffs' expert, Barkelew, testified at R. 72 and 73 that the means adopted by defendants for attaching the glass to the brackets was the full equivalent of the means shown in plaintiffs' patent. This was not denied by defendants, but, on the contrary, as pointed out ante, was admitted by the stipulation that certain of the claims, at least, were infringed.

Regardless of the admission of defendants' counsel, it is plain that one device is the equivalent of the other. Plaintiffs support their glass at the top and bottom by means of clamps or brackets, and defendants support their glass *near* the top and bottom by means of clamps passing through the glass. Both methods are in common use in show windows and display cases, and the difference is one merely of *form* or *location*. The desideratum is to place the rod on which the glass pivots approximately on the median line of the glass.

As the courts have repeatedly held: "Form is immaterial unless it is essential to the result or indispensable by reason of the state of the prior art and novelty of the claim." (*Detroit Copper Mining Co.* v. *Mine & Smelter Supply Co.*, 215 Fed. 100.)

The Facts on Which the Defense of Intervening Rights Must Rest.

Defendant Kipper, to whom the others appear to have given the credit of getting up the design of defendants' device (Plaintiffs' Exhibit "2") says (R. 74) that he conceived the idea of making such a windshield "in the winter of 1918. 'Well, it was, oh, November, or December, some time along there.'"

What such "conception" consisted of is left for conjecture, because it may, in view of the then recent issuance of the Keller original patent and the presence of Keller wings in the market, have been merly a general idea to start a windshield wing business.

The first die (Defendants' Exhibit "G") for making the hardware for defendants' wings was not made until May, 1919. Jensen, the die maker, says it was made about May 7th, 1919 (R. 97), or three weeks before the Keller reissue was filed, or eleven days before it was executed and sworn to and sent to Washington for filing.

First Bona Fide Sales by Defendants Subsequent to Application for Reissue.

The first *sale* of any of defendants' wings of which there is any record is *May 30, 1919* (Defendants' Exhibit "Q"—R. 77-78), or, to quote witness Kipper:

> "that the windshield wings which he sold were mostly delivered to Dick Smith, who was manufacturing nail strippers, and was to sell the wind deflectors.

> Witness identified, as bearing his signature, a piece of paper with the name of Dick Smith, 912 Thirty-seventh place, at the top of it, which says: 'Your order 1, our order 3, dated May 30, 1919.'
>
> He stated Dick Smith was the first man to start to sell this stuff, and 'we sold and delivered our wind deflectors to him'." * * *

Of course, any transaction subsequent to the filing of the reissue can in no wise adversely affect the question of intervening rights.

Defendant Gable or Gabel, the president of defendant Adams-Campbell Company, Inc., testified that whatever expense had been incurred by any of defendants *prior to August 21st, 1919* (three months following the filing of the reissue application), was eventually borne by said Dick Smith, who is not a party to this suit. Gabel says that while he financed the business originally, Smith repaid everything:

> "All the merchandise and labor furnished by the Adams-Campbell Company was paid for by Smith. I would not say positively that Smith's payment of August 21st made the Adams-Campbell Company whole, but I think it did. * * *
>
> There was no partnership arrangement with Smith; we were to manufacture for him at a certain price; we charged him so much for manufacturing." (R. 153-4.)

Defendants' Work on Windshield Wings Prior to Keller Reissue Application Wholly Experimental.

The testimony shows that defendants' work prior to May 22nd, 1919, the date of plaintiffs' reissue application, was mainly, if not wholly, of an experimental character. If there was any actual "use in public" by defendants-appellees or of their device it was not a "public use" (*Los Angeles Lime Co. et al.* v. *Ceriat*, 270 Fed. 155 [C. C. A., 9th Cir.]).

The only record evidence the defendants have brought forward to show the nature and scope of their activities in this field consists of some vouchers and job envelopes which show in themselves that nothing was completed, either by way of patterns, castings or fabricated devices, until a time considerably subsequent to May 22nd, 1919, the date of filing of the reissue patent in suit, and, in fact, everything, as far as the record goes, except a single unexplained entry of March concerning "4 windshield castings", took place after the plaintiffs had discovered that the patent could and should be broadened.

Defendants' Manufacture Unknown to Plaintiffs.

Added to the above it appears that plaintiffs had no knowledge of defendants' doings in the few months' interim between the issuance of the original patent, in November, 1918, and the application for the reissue in the following May, so, of course, lacking notice, there was nothing whereby an estoppel against plaintiffs could have been created. In fact,

the testimony shows that the plaintiffs never heard of the defendants' windshield nor business until late in the fall of 1919, long after the reissue application had been filed.

On the other hand, defendants were entirely familiar with the Keller invention before, or at the time, they made their first model. On this point defendant Kipper testified as follows in connection with the construction of his first model:

> "Q. Were you familiar with the windshield wings of Mr. Keller or Mr. Lillie—the Hartford Windshield Company was putting out *at that time?*
>
> A. Why, I was familiar with almost all of the wings that were put out at that time.
>
> Q. Well, were you familiar with the particular windshield wing here in controversy of plaintiff?
>
> A. I believe I was, yes." (R. 87.) (Italics ours.)

It should be borne in mind that Keller had been making and selling these devices in Los Angeles, the home of Kipper, since the summer of 1917. (R. 51.) Knowledge of the Keller device is, of course, tantamount to having knowledge of the Keller invention.

Defendants Did Not Seek Advice Concerning Infringement Until After Keller Had Applied for Reissue.

Furthermore, defendants did not consult their patent attorney regarding the question of infringe-

ment of the Keller patent, if at all, until after Keller had made his application for reissue. Keller's reissue application was filed *May 22nd, 1919*. Defendant Kipper does not fix any date when he first consulted the patent attorneys. His testimony on this phase is:

> "Mr. Gabel was the first one to consult with an attorney about it. * * * And so I finally did go up with Mr. Gabel, and his attorneys, Hazard and Miller, told us at that time that he could *get us a patent on it*, and that we were all right, and to go right ahead and make it." (R. 124.) (Italics ours.)

As to the time when this occurred defendant Gabel testified as follows:

> "I did not consult with Mr. Kipper relative to the Keller patent until after he applied for our patent in July, 1919; that is Mr. Kipper's application for patent." (R. 153.)

As a matter of fact, the records of the United States Patent Office show that Kipper did not file his application until *August 20th, 1919*. It follows, therefore, that Keller's reissue had been pending some three months before defendants made any efforts to inquire into the question of infringement or in any other respect to obtain the advice of a patent attorney.

Defendants Solicited Advice from Attorney Who Had Previously Been Discharged by Keller.

If the Court should be impressed with the thought that defendants consulted Keller's own solicitors in the sense that the solicitors' admissions are binding on Keller, then it is important to note that they did not do so until after Keller had discharged these solicitors.

Hazard and Miller may well be considered as having become disgruntled, and, therefore, the advice they gave to defendants, which has not been proven definitely, is no wise binding on Keller. Furthermore, it is apparent that these defendants did not go to their attorney primarily to get advice concerning infringement or non-infringement of the Keller patent; they went there for the purpose of filing an application on their own particular design, probably with the thought of using the patent as a defense to a possible infringement suit. In any event, if they inquired about the Keller patent, they did so as the result of a troubled conscience, knowing that they had appropriated the essential features of the Keller device.

It is not the case of one who innocently and without notice embarks on a business venture and then after having built up a big independent business finds himself pounced upon unexpectedly.

Under a similar state of facts Judge Day in the case of *Bucher & Gibbs Plow Co.* v. *International Harvester Co.*, 211 Fed. 473, 475, sustained the

Niesz patent and rejected defendant's claims to intervening rights, saying:

> "The record discloses that the defendant knew of the Niesz patent at the time it was developing its harrow, and that the structure developed by the defendant was considered by the patent department of the defendant company, as whether or not it was within the scope of the original Niesz patent. It is also plain that the defendant's structure contains all the elements of the claim of the original Niesz patent.
>
> "The defendant, being in possession of these facts, cannot well claim an estoppel against the reissue patent. No intervening rights accrued to the defendant in this case upon which, in equity, it can rely."

LAW OF "INTERVENING RIGHTS."

The issues thus become limited to determination of whether or not the things that may have been done in the interim between the date of the original patent (November 12th, 1918) and the date of filing of the reissue (May 22nd, 1919), creates estoppel, because, we contend, estoppel and intervening rights here mean the same thing.

Six months' innocent delay by these plaintiffs ought not to put them in the category of those cases which show glaring abuse of the privilege of reissue.

In all of the reported cases decided by this Court affecting reissue patents, no defense of "intervening

rights" in favor of an individual appears to have been raised, except in the recent case of *Abercrombie & Fitch* v. *Baldwin*, 245 U. S. 198, and there the defense was disposed of without assigning any other reason than that given by the trial court, as follows:

> "To the contention that the Justrite Company, the manufacturing defendant, acquired rights before the reissue, we again may interpose the reasoning and conclusion of District Judge Mayer and their affirmance by the Circuit Court of Appeals. The learned judge said: 'It will be remembered that this company entered the field with its lamp at a time when the validity and scope of the Baldwin patent were still unquestioned, and when, after some five years of capable effort, the Baldwin lamp had created an extensive market. The Justrite Company took its chances, and, in view of the necessities of the situation, it is relieved of all accountability for the period prior to the granting of the reissue patent; but when the reissue was granted, the Justrite Company again took its chances.'"

Unfortunately, this Court did not state the reasons underlying this rule, which, taken with the statement therein to the effect that "the original patent did not need the exposition of the reissue," has led to considerable misapprehension on the part of both bench and bar as to the effect of this decision. Thus, defendants' counsel, in his brief both in the lower court and on appeal, urged that your

Honors' decision in the Abercrombie case was intended to apply only to narrowed reissues, and this view apparently was adopted by the Court of Appeals.

In every other case decided by this Court the reissue patent was either sustained or invalidated without reference to so-called "intervening rights". Where held invalid, one or more of the following circumstances appeared:

1. Unreasonable delay, as in *Miller* v. *Bridgeport Brass Co.*, 104 U. S. 350, and in *Mann* v. *Harwood*, 112 U. S. 354.

2. Knowledge on the part of plaintiff of defendant's proceeding to manufacture before reissue applied for, and where plaintiff openly conceded that the original patent was not infringed, as in the case of *Dunham* v. *Dennison*, 154 U. S. 103.

3. Inclusion of new matter by unwarranted expansion or alteration of the specification and claims, as in the case of *Coon* v. *Wilson*, 113 U. S. 268, and *Parker & Whipple* v. *Yale*, 123 U. S. 87.

None of these circumstances arise in the present case, and hence it becomes necessary to consider the question of intervening rights in the sense in which some of the Circuit Courts of Appeal have of late viewed this subject, namely, as a personal privilege arising in favor of a particular defendant who commenced manufacture of the device complained of prior to the date of application for reissue.

Conflict of Decisions Relative to "Intervening Rights."

(1) *Against favoring particular defendants.*

The Sixth Circuit, in *Milloy Electric Co.* v. *Thompson Houston Co.*, 148 Fed. 843, had previously said:

> "The *rule does not rest upon the ground of an estoppel in favor of particular persons.* As was said by Mr. Justice Bradley in *White* v. *Dunbar*, 119 U. S. 47, 52, 7 Sup. Ct. 75, 30 L. Ed. 303: 'The circumstance that other improvements and inventions, made after the issue of a patent, are often sought to be suppressed or appropriated by an unauthorized reissue, has sometimes been referred to for the purpose of illustrating the evil consequences of granting such reissues; but it adds nothing to their illegality. That is deduced from general principles of law, as applied to the statutes authorizing reissues and affecting the rights of the government and the public.'" (Italics ours.)

(2) As expressing a contrary view: *in favor of a particular defendant:*

(a) *Auto-Piano Co.* v. *American Co.*, 222 Fed. 276 (C. C. A., 2nd Cir.):

> "We therefore reach the conclusion that complainant is estopped from claiming infringement *by this particular defendant* in continuing the manufacture and sale which it entered upon while the first reissue was the only public announcement of complainant's alleged monopoly."

(b) The Circuit Court of Appeals for the Nin
Circuit in the instant case, citing:

> *Coon* v. *Wilson*, 113 U. S. 268;
> *Topliff* v. *Topliff*, 145 U. S. 156;
> *Dunham* v. *Dennison*, 154 U. S. 103, 111;
> *Auto-Piano Co.* v. *American Graphaphon*
> *Co.*, 222 Fed. 276.

Thus it appears that this Honorable Court
relied upon to support both sides of the controvers
and to sustain two diametrically opposed views o
the law—a manifestly anomalous situation.

That there is uncertainty among the courts i
further shown by the decision of the Sixth Circui
in the recent case of *American Automotoneer Com*
pany v. *Porter*, 232 Fed. 456, where that learne
Court found it necessary to use equivocal languag
in stating the rule, thus:

> "The reissue statute * * * does no
> specify that rights accruing to the public o
> *to individuals* after the first issue and befor
> the application for reissue shall affect the lat
> ter right * * * we *think* it must be as
> sumed that the principle of estoppel (*perhap*
> in favor of the public generally) is at the bot
> tom of the rule. * * * The settled doctrin
> has come to be that from a delay of more than
> two years, and in the absence of any *suffi*
> *cient* (?) contrary evidence, these fatal inter
> vening rights (public or *private*) will be pre
> sumed, in the presence of less delay they mus

be proved. But see *White* v. *Dunbar*, 119 U. S. 47, 52." (Italics and question mark ours.)

Mr. Justice Brown, in the case of *Topliff* v. *Topliff*, 145 U. S. 156, gave a very complete discussion of the law affecting reissues, and reviewed at length the decisions of this Court prior to 1892. While that opinion went far towards clarifying important questions respecting the time and manner of obtaining reissue patents, it left in doubt the question of intervening rights. In his summary of the law, appearing at page 171, the learned justice said:

> "Under such circumstances it would be manifestly unjust to deny him the benefit of a reissue to secure to him his actual invention, provided it is evident that there has been a mistake, and he has been guilty of no want of reasonable diligence in discovering it, *and no third persons have in the meantime acquired the right to manufacture or sell what he has failed to claim.*" (Italics ours.)

Nothing is said in explanation of how third persons might acquire any right to manufacture or sell what the patentee originally failed to claim, or even whether such a right would defeat the reissue in its entirety or merely confer a special privilege on the person asserting that right.

THE CORRECT DOCTRINE.

Your petitioners earnestly contend that a reissue patent is either enforcible against every member of the public or is enforcible against none; and therefore, if the present reissue can be said to be within the purview of the statute authorizing reissues, no such intervening rights in favor of a particular individual can possibly exist, unless that individual can prove actions or conduct on the part of the patentee amounting to an estoppel. While it follows as a general principle of law that the defendants are not accountable for the particular devices, if any, made prior to the granting of this reissue, they have no right to make and sell others thereafter. In other words, a reissue patent has the same effect in operation of the law on the trial of all actions for causes thereafter arising, as if the same had originally been filed in such corrected form (Sec. 4916, R. S.); and therefore there is no more reason why a particular individual should be given the right to continue his infringing acts after the granting of a reissue than he would have in the case of an original patent where his infringing acts commenced prior to the granting of such original patent.

This we conceive to be the true rule, based upon the language of section 4916, R. S., authorizing reissues, as follows:

> "Every patent so reissued together with the corrected specification, shall have the same

effect and operation in law on the trial of all actions and causes thereafter arising, as if the same had been originally filed in such corrected form."

Also the earlier decisions of this Court in the cases of *Grant* v. *Raymond*, 6 Peters 217; *Stimson* v. *Westchester Railroad Co.*, 4 Howard 380; *Battin et al.* v. *Taggart*, 17 Howard 73, and *White* v. *Dunbar*, *supra*.

In our humble way we have sought to impress this Honorable Court with the need for authoritative expression on matters of great moment to the commercial interests of this country, and we pray your decision particularly respecting the five questions and propositions propounded in paragraph VII, pages 5 to 8 of our original petition.

Respectfully submitted,

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Of Counsel.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1923.

Number 315.

Clarence D. Keller and Arthur C. Lillie, Doing Business as Hartford Windshield Company,
Petitioners-Plaintiffs,

vs.

Adams-Campbell Company, Inc. (a Corporation), T. R. Gabel, A. F. Kipper, Individually, and A. F. Kipper Doing Business as Kipper & Co.; Harry W. Hahn, Doing Business as Harry W. Hahn Manufacturing Company, and Augustine S. Lockwood, Individually, and Augustine S. Lockwood Doing Business as Kozy Wing Auto Supply Company,
Respondents-Defendants.

Brief on Behalf of Respondents-Defendants on Final Hearing.

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Counsel for Respondents-Defendants.

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IN THE

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vs.

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Respondents-Defendants.

Brief on Behalf of Respondents-Defendants on Final Hearing.

[In the following brief we shall refer to petitioner as plaintiff and to our clients the respondents, as defendants.

For the purpose of emphasizing the salient portion of some of the decisions we have utilized italics.]

Introduction.

This case comes before this court upon writ of certiorari solely upon the ground that there is a sharp conflict between the courts of the several circuits as to the law applicable to reissue patents in connection with the defense of intervening rights.

The patent at issue has not been involved in any litigation outside the Ninth Circuit, and the district judge who tried the case and the three judges of the Circuit Court of Appeals who heard the appeal are quite unanimous as to the facts of the case and as to the application of the law thereto.

We believe the only question in which this court is interested is the broad question of the state of the law as to reissues in which intervening rights are set up as a defense, and whether, in view of this law, this case was correctly decided in the court below. We will direct our brief solely to these questions.

We did not oppose the petition for the writ of certiorari, as we did not think that the court would desire to review this question at this time. We do not, however, agree with the petitioner that there is any sharp conflict of law on the questions to be considered.

After trying several cases involving intervening rights, in some of which we have had

reissued patents sustained, we are impressed with consistency of all the decisions from the various Federal courts who have dealt with this subject. The underlying principles relating to intervening rights seem to have been understood by all the judges in the reported cases, and to have been consistently applied in *all* the reported cases. Instead of there being a sharp conflict as to the law between the judges of the various Circuit Courts of Appeal, as alleged in the petition for the writ of certiorari, it seems to us that all the reported decisions which consider intervening rights, if properly interpreted, form a harmonious whole. In fact, we know of no branch of Federal practice in which our courts appear to better advantage than in their treatment of this difficult matter of intervening rights.

THE FACTS.

The facts in this case are as follows:

The defendants were engaged in the development of windshield wings for some time prior to the issue of the original Keller patent, the reissue of which is here to be considered. At the time the original Keller patent issued, or perhaps slightly after that time, our clients were considering the manufacture in quantity of such a windshield wing. When they discovered that the Keller patent had issued, they visited the

attorney who had obtained the patent for Keller and submitted to him the windshield wing defendants proposed to make, asking him if he considered it an infringement of the Keller patent. The windshield wing submitted was that now alleged to be an infringement. The attorney for Keller advised our clients that this windshield wing did not infringe the original Keller patent. This advice has since been judicially declared to be correct. The original Keller patent contained only three claims, which appear in the reissue as the first three claims thereof. These claims are quite specific to "brackets engaging the glass at the upper and lower ends," and obviously this structure is not present in defendants' device, in which the glass is secured to the frame by bolts which pass through the glass. Defendants, therefore, acting upon the advice of the solicitor who prosecuted the original Keller patent, and upon whose advice they were certainly justified in relying, proceeded to embark in the business of making windshield wings, and there will be found in the record very complete documentary and oral proof showing that prior to the application for reissue of the Keller patent, our clients had made tools and dies and were actually embarked on the business of making windshield wings that did not infringe the original Keller patent.

We note, however, that the greater portion of plaintiff's brief is devoted to questions of fact. We do not understand that this is an appeal from a decision as to the facts, and since we find it necessary to devote considerable space to the consideration of the questions of law raised in plaintiff's petition, we believe it best to rest our case as to the facts on the findings of the trial court and the Court of Appeals, which concurred in such findings. These findings are abundantly supported by the evidence and we are sure will not be disturbed by this court merely upon statements in plaintiff's brief.

We cannot understand, however, upon what theory plaintiff petitions for a writ on the ground that there is confusion of *law*, and then files a brief directed almost wholly to the *facts*.

Anything Disclosed But Not Claimed in a Patent Is Dedicated to the Public.

This principle has become so well established that it is almost elementary. It was very clearly stated by this court as follows:

> "The public is notified and informed by the most solemn act on the part of the patentee that his claim to invention is for such and such an element or combination, and nothing more. Of course, what is not claimed is public property. The presumption is, and such is generally the fact, that what is not claimed was not invented by

> the patentee, but was known and used before he made his invention. But, whether so or not, his own act has made it public property if it was not so before. The patent itself, as soon as it is issued, is the evidence of this."
>
> Mahn v. Harwood, 112 U. S. 354, 28 L. Ed. 665.

This was approved in Underwood v. Gerber, 149 U. S. 224, 37 L. Ed. 710.

The principle was not original with Mahn v. Harwood, but was well established prior to that time, being well stated in the "Corn Planter Patent" case, 23 Wall. 181, 23 L. Ed. 161, and repeatedly applied by the courts.

On Nov. 2, 1891, this court said:

> "Nothing is better settled in the law of patents than that the patentee may claim the whole or only a part of his invention, and that if he only describe and claim a part, he is presumed to have abandoned the residue to the public."
>
> McClain v. Ortmayer, 141 U. S. 424, 35 L. Ed. 800.

This was later approved in Deering v. Winona Harvester Works, 155 U. S. 286, 39 L. Ed. 153.

The principle has been further applied in many decisions of the lower courts, being very well stated as follows:

"The statute requires the inventor to particularly point out and to claim distinctly the improvement or combination which he claims as his discovery. Rev. St., Sec. 4888. When, under this statute, the inventor has made his claims, he has thereby disclaimed and dedicated to the public all other combinations and improvements apparent from his specification and claims that are not mere evasion of the device, combination, or improvement which he claims as his own. While the patent is notice of the claims which it contains and allows, *it constitutes an estoppel of the patentee from claiming under that or any subsequent patent any combination or improvement there shown* which he has not clearly pointed out and distinctly claimed as his discovery or invention when he received his patent. It is a complete and a legal notice to everyone—notice on which everyone has a right to rely—that he may freely use such improvements and combinations without claim or molestation from the patentee."

McBride v. Kingman, 97 Fed. 217.

The above is also quoted practically *verbatim* in Royal Co. v. Tweedie, 276 Fed. 351, which also cites Valvona-Marchiony Co. v. Perella, 212 Fed. 168.

In the present case the plaintiff in the original Keller patent claimed a windshield wing in which the glass shield member was supported in "brackets engaging said member at its upper and lower ends," that is, in the channel-

shaped members 17 and 18. All three claims were directed to this feature. By the issuance of the original Keller patent plaintiff dedicated to the public the right to make windshields, like those of defendants, in which the glass was not supported in such brackets.

Equitable Estoppel Is a Principle Often Applied to Many States of Fact.

The principle of equitable estoppel is not peculiar to patent law, but has a very wide application. This court has stated that

> "it often gives triumph to right and justice where nothing else known to our jurisprudence can, by its operation, secure those ends. Like the Statute of Limitations, it is a conservator, and without it society could not well go on."
>
> Daniels v. Tearney, 12 Otto 415, 26 L. Ed. 187. Decided Dec. 13, 1880.

It has been repeatedly applied not only in patent matters, but in all sorts of cases. It is not necessary for us to attempt to restate it, as the court has many times clearly defined it. See, for example, the following:

> "Where a person tacitly encourages an act to be done, he cannot afterwards exercise his legal right in opposition to such consent, if his conduct or acts of encouragement induced the other party to change his position, so that he will be pecuniarily

prejudiced by the assertion of such adverse claim."

Swain v. Seamens, 9 Wall. 254, 19 L. Ed. 554. Decided Jan. 24, 1870.

"If one person is induced to do an act prejudicial to himself in consequence of the acts or declarations of another, on which he had a right to rely, equity will enjoin the latter from asserting his legal rights against the tenor of such acts or declarations."

Branson v. Wirth, 17 Wall. 32, 21 L. Ed. 566. Decided Mar. 3, 1873.

"The estoppel here relied upon is known as an equitable estoppel, or estoppel *in pais*. The law upon the subject is well settled. The vital principle is, that he who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden."

Dickerson v. Colgrove, 100 U. S. 578, 25 L. Ed. 618. Decided Jan. 12, 1880.

"These cases are referred to for the purpose of showing some of the circumstances under which the courts, to promote the ends of justice, have sustained the general principle that where a duty is cast upon a person, by the usages of business *or otherwise*, to disclose the truth (which he has the means, by ordinary diligence, of ascertaining), and he neglects *or omits* to discharge that duty, whereby another is mis-

led in the very transaction to which the duty relates, he will not be permitted, to the injury of the one misled, to question the construction rationally placed by the latter upon his conduct."

Leather Mfgrs. Nat. Bank v. Morgan, 117 U. S. 96, 29 L. Ed. 811.

"Parties must take the consequences of the position they assume. They are estopped to deny the reality of the state of things which they have made appear to exist, and upon which others have been led to rely."

Casey v. Galli, 94 U. S. 673, 24 L. Ed. 168.

"It is fitly denominated an equitable estoppel because it rests upon the doctrine that it would be against the principles of equity and good conscience to permit the party against whom the estoppel is sought to avail himself of what might otherwise be his undisputed rights."

Stone v. Bank of Commerce, 174 U. S. 412, 43 L. Ed. 1028 at 1034.

"Estoppel ordinarily proceeds upon principles which prevent one from denying the truth of statements upon which others have acted, where the denial would have the effect to mislead them to their prejudice."

Arizona *ex rel.* Gaines v. Copper Queen C. M. Co., 233 U. S. 87, 58 L. Ed. 863.

"The only case in which a representation as to the future can be held to operate as an estoppel is where it relates to an

intended abandonment of an existing right, and is made to influence others, and by which they have been induced to act."

Union Mut. L. Ins. Co. v. Mowry, 96 U. S. 544, 24 L. Ed. 674.

It is evident from the above that the principle of estoppel is not in any way peculiar or restricted to patent cases. It is a broad general principle many times applied by this court in many varieties of actions and to many states of fact. Its use in patent cases is only one of its many applications.

Intervening Rights Depend Upon the Principle of Equitable Estoppel and Arise Whenever Anyone Accepts the Dedication to the Public in any Patent and Acts in Such a Manner as to Avoid the Claims of this Patent Although Infringing a Later Reissue.

The original case on intervening rights is Miller v. Brass Co., 104 U. S. 350, 26 L. Ed. 783. In that decision, decided January 9, 1882, the court said:

"The power given by the law to issue a new patent upon the surrender of the original, for the correction of errors and mistakes, has been greatly misunderstood and abused."

The court then reviewed the history of reissues and finally said:

> "At all events, we think it clear that it was not the special purpose of the legislation on this subject to authorize the surrender of patents for the purpose of reissuing them with broader and more comprehensive claims, although, under the general terms of the law, such a reissue may be made where it *clearly appears* that an actual mistake has inadvertently been made. But, by a curious misapplication of the law, it has come to be principally resorted to for the purpose of enlarging and expanding patent claims. And the evils which have grown from the practice have assumed large proportions. Patents have been so expanded and idealized, years after their first issue, that hundreds and thousands of mechanics and manufacturers, who had just reason to suppose that the field of action was open, have been obliged to discontinue their employments, or to pay an enormous tax for continuing them."

The court then went on and said:

> "Now whilst, as before stated, we do not deny that a claim may be enlarged in a reissued patent, we are of opinion that this can only be done when *an actual mistake* has occurred; not from a mere error of judgment, for that may be rectified by appeal, but a real, *bona fide* mistake, inadvertently committed; such as a court of chancery, in cases within its ordinary jurisdiction, would correct. Reissues for the enlargement of claims should be the exception and not the rule. And when, if a claim is too narrow, that is, if it does not

contain all that the patentee is entitled to, the defect is apparent on the face of the patent, and can be discovered as soon as that document is taken out of its envelope and opened, there can be no valid excuse for delay in asking to have it corrected. Every independent inventor, every mechanic, every citizen, is affected by such delay, and by the issue of a new patent with a broader and more comprehensive claim. The granting of a reissue for such a purpose, after an unreasonable delay, is clearly an abuse of the power to grant reissues, and may justly be declared illegal and void. *It will not do for the patentee to wait until other inventors have produced new forms of improvement, and then, with the new light thus acquired, under pretense of inadvertence and mistake, apply for such an enlargement of his claim as to make it embrace these new forms.* Such a process of expansion, carried on indefinitely, without regard to lapse of time, would operate most unjustly against the public, and is totally unauthorized by the law. In such a case, even he who has rights, and sleeps upon them, justly loses them.

The correction of a patent by means of a reissue, where it is invalid or inoperative for want of a full and clear description of the invention, cannot be attended with such injurious results as follow from the enlargement of the claim. And hence a reissue may be proper in such cases, though a longer period has elapsed since the issue of the original patent. But in reference to reissues made for the purpose of enlarging the scope of the patent, the rule of laches should be strictly applied; and no one should be relieved who has slept upon his

> rights, and has thus led the public to rely on the implied disclaimer involved in the terms of the original patent. And when this is a matter apparent on the face of the instrument upon a mere comparison of the original patent with the reissue, it is competent for the courts to decide whether the delay was unreasonable, and whether the reissue was, therefore, contrary to law and void."

In this case, what has since come to be known as the two-year rule was first expressed as follows:

> "If two years' public enjoyment of an invention with the consent and allowance of the inventor, is evidence of abandonment, and a bar to an application for a patent, a public disclaimer in the patent itself should be construed equally favorable to the public."

Miller v. Brass Co. has probably been relied upon to invalidate more patents than any other one decision. Rose's Notes cite eighteen Supreme Court cases and many more cases in the lower courts, in which it has been followed.

Since, in the particular case decided, there was gross laches, Miller v. Brass Co. was decided on this point and is usually cited as defining the two-year rule. It nevertheless, as pointed out above, clearly recognized the principle of intervening rights which later cases have more fully defined.

Following the two-year rule set up in Miller v. Brass. Co. and many times since sustained by this court, it is definitely settled that any broadened reissue applied for more than two years after the issue of the original patent is void.

In Clements v. Odorless Excavating Co., 109 U. S. 641, 27 L. Ed. 1060, the court further recognized such rights in the following words:

> "The expansions in claims 1 and 3 of the reissue were afterthoughts, *developed by the subsequent course of improvement in the Scharf and Frazier patents, and intended to cover matters appearing in those patents and not claimed in the original patent*, No. 115,565. No excuse is given for the delay in applying for the reissue, nor is any actual inadvertence, accident or mistake shown. The omission to claim sub-combinations in the combinations claimed, the existence of such sub-combinations being apparent on the face of the original patent, was, in law, on the facts in this case, such a dedication of them, if new, to the public, that a reissue, to cover such sub-combinations, in revocation of such dedication, cannot be availed of *to the prejudice of rights acquired by the public to what is shown in the Scharf and Frazier patents*, issued before the reissue was applied for. The reissued patent must, for these reasons, be held to be invalid as to claims 1 and 3."

Since, however, the original patent, No. 115,565, referred to in the above citation, was

issued on June 6, 1871, and the reissue was applied for on January 11, 1876, it is evident that the two-year rule alone would have furnished sufficient ground for the decision and that no doctrine of intervening rights was necessary to a determination of the case. It is evident, however, that the court in this case again recognized the rights of the public as intervenors.

The law of intervening rights was further developed in Coon v. Wilson, 113 U. S. 268, 28 L. Ed. 963. In this case the court said:

> "The final decree in this case was entered July 28, 1881. The decisions of this court in Miller v. Brass Co., 104 U. S. 350, and James v Campbell, 104 U. S. 356, were made January 9, 1882. Under those decisions and many others made by this court since, the 1st and 4th claims of the reissue cannot be sustained. Although this issue was applied for a little over three months after the original patent was granted, the case is one where it is sought merely to enlarge the claim of the original patent, by repeating that claim and adding others; where no mistake or inadvertence is shown, so far as the short or sectional bands are concerned; *where the patentee waited until the defendants produced their continuous band collar, and then applied for such enlarged claims as to embrace defendant's collar, which was not covered by the claim of the original patent;* and where it is apparent, from a comparison of the two patents, that the reissue was made to enlarge the scope of the original."

This court further defined and developed intervening rights in Parker v. Yale Clock Co., 123 U. S. 87, 31 L. Ed. 100, as follows:

> "This, therefore, is a case of the amendment of a patent *so as to cover improvements not covered by the patent, and which came into use by others than the patentee and his licensee free from protection of the patent.* There is no evidence of any attempt to secure by the original patent the inventions covered by the first eight claims of the reissue, and those inventions must be regarded as having been abandoned or waived so far as the reissue in question is concerned, subject, however, to the right to have made a new application for a patent to cover them. In other words, those eight claims are not for the same invention which was originally patented."

Intervening rights were again recognized and reviewed in Topliff v. Topliff, 145 U. S. 156, 36 L. Ed. 658 at page 663. The court in this case recognized the existence of such rights as follows:

> "In the large number of cases which have come up to this court since that of Mahn v. Harwood was decided, in which reissues have been held to be invalid, it will be found that the opinion of the court was put upon the ground, either that the patentee had been guilty of inexcusable laches, usually of from four to sixteen years, or that circumstances had occurred since the granting of the original patent which made the reissue operate harshly or unjustly to the defendant in the case.

"Thus, in Matthews v. Boston Machine Co., 105 U. S. 54, 26 L. Ed. 1022, there was a delay of fourteen years; in Bantz v. Frantz, 105 U. S. 160, 26 L. Ed. 1013, a delay of fourteen years and six months; in Wing v. Anthony, 106 U. S. 142, 27 L. Ed. 110, of over five years; in Moffitt v. Rogers, 106 U. S. 423, 27 L. Ed. 76, of two years and seven months; in Gage v. Herring, 107 U. S. 640, 27 L. Ed. 601, of fourteen years; in Clements v. Odorless E. A. Co., 109 U. S. 641, 27 L. Ed. 1060, of nearly five years; in McMurray v. Mallory, 111 U. S. 97, 28 L. Ed. 365, of nine years; in White v. Dunbar, 119 U. S. 47, 30 L. Ed. 303, of five years. In Parker & W. Co. v. Yale Clock Co., 123 U. S. 87, 31 L. Ed. 100, there was a delay of one year and eight months, but it appeared that the improvements not covered by the original patent had been brought into use by others than the patentee before the reissue was applied for. In Coon v. Wilson, 113 U. S. 268, 28 L. Ed. 963, a reissue was applied for only a little over three months after the original patent was granted; but the patentee waited until the defendants produced their device and then applied for such enlarged claims as to enbrace this device, which was not covered by the claim of the original patent, and it was apparent from a comparison of the two patents that the application for a reissue was made merely to enlarge the scope of the original. * * *

"To hold that a patent can never be reissued for an enlarged claim would be not only to override the obvious intent of the statute, but would operate in many cases with great hardship upon the patentee. The specification and claims of a

patent, particularly if the invention be at all complicated, constitute one of the most difficult legal instruments to draw with accuracy, and in view of the fact that valuable inventions are often placed in the hands of inexperienced persons to prepare such specifications and claims, it is no matter of surprise that the latter frequently fail to describe with requisite certainty the exact invention of the patentee, and err either in claiming that which the patentee had not in fact invented, or in omitting some element which was a valuable or essential part of his actual invention. Under such circumstances, it would be manifestly unjust to deny him the benefit of a reissue to secure to him his actual invention, provided it is evident that there has been a mistake and he has been guilty of no want of reasonable diligence in discovering it, *and no third persons have in the meantime acquired the right to manufacture or sell what he had failed to claim.* The object of the patent law is to secure to inventors a monopoly of what they have actually invented or discovered, and it ought not to be defeated by a too strict and technical adherence to the letter of the statute, or by the application of artificial rules of interpretation."

The law of intervening rights was still furtheir enunciated by the court in Dunham v. Dennison, 154 U. S. 106, 38 L. Ed. 924, in which the court said:

"After the defendant had made envelopes with a short flap of semi-circular shape and covering little more than the opening of the envelope (which, it is admitted, did

not infringe the plaintiff's patent as originally issued), the plaintiff obtained a reissue, enlarging the claims, and altering the specification throughout, so as to include an envelope with a flap of any size or shape, and to make the invention consist, not, as in the leading words of the description in the original patent, of 'an envelope with an end flap covering its side,' but in 'a tag provided with means for attaching it to the merchandise, and with an envelope or pocket to receive a bill or invoice of the merchandise.' The words of the description in the original patent were neither technical nor complicated; but they were of the simplest kind, and their meaning and scope could not have been misunderstood by anyone who read them with the slightest attention, least of all by the patentee. *To uphold such a reissue under such circumstances would be to grant a new and distinct privilege to the patentee at the expense of innocent parties, and would be inconsistent with the whole course of recent decisions in this court.*"

Citing:

Miller v. Bridgeport Brass Co., 104 U. S. 350 (26:783);

Mahn v. Harwood, 112 U. S. 354 (28:665);

Coon v. Wilson, 113 U. S. 268 (28:963);

Topliff v. Topliff, 145 U. S. 156 (36:658);

Huber v. Nelson Mfg. Co., 148 U. S. 270 (37:447);

Leggett v. Standard Oil Co., 149 U. S. 287 (37:737);
Corbin Cabinet Lock Co. v. Eagle Lock Co., 150 U. S. 38 (37:9

The doctrine of intervening rights developed by the court has been applied by the courts below as follows:

> "The owner of property may abandon it on a desert, and, turning back, retake it into his possession, and it will be his again. Even in that case, it was not his after he threw it away until he retook it, and yet he could make it his by retaking it, and then his title was as good as ever. But we are not dealing with that kind of property. The patent laws protect the exclusive right of an inventor; but the great object of those laws is to benefit the public by stimulating invention, which it is the theory of the law can be best accomplished by securing to the inventor, for a limited time, under enacted conditions, an exclusive right to the manufacture, use and sale of his invention, thereafter to be forever free to the public. Hence, in a case of abandonment or reissue, the matter is not to be likened to rights to chattels personal, for in reference to patents there is always a public equity which must not be disregarded. But for this public equity, in a case of reissue broadening the claim within the limits of the invention, the rights of an intervenor, who had in the meantime appropriated what had been inadvertently or by mistake or accident omitted from the claim, might be saved by granting the reissue,

subject to a license to the intervenor; *but applying the public equity, the court must regard the intervenor as the representative of the public and therefore whatever rights he gains the public gains.*"

Consldtd. Fruit Jar Co. v. Bellaire Stpg. Co., 27 F. R. 377-381.

"Ever since the issue of its patent for the diamond inkstand granted July 6, 1909, the defendant has done a business in the manufacture and sale of these inkstands which I have held infringed complainant's reissue patent. This business appears to have been larger in the first two or three years after the issue of the Hilles patent than it has been since. While, therefore, the defendant may not have manufactured or sold large quantities of its inkstands, it is nevertheless an incontrovertible fact that it has manufactured and sold under the Hilles patent a substantial number of inkstands, and that neither the patent nor the inkstand infringed Ashley's original patent according to the construction placed thereon by the Circuit Court of Appeals. *I can feel no doubt that a business of some importance has been built up by the defendant between the dates of the granting of the original patent and of the reissue, and that consequently intervening rights have arisen within the legal acceptation of the term.* Under these circumstances, complainants cannot be allowed to claim 'infringement by this particular defendant in continuing the manufacture and sale which it entered upon while the * * * (orig-

inal patent) was the only public announcement of complainant's alleged monopoly.'"

Ashley v. Samuel C. Tatum Co., 240 F. R. 979-982.

"Defendant next urges that there were 'intervening rights' which prevented such a reissue, and relies upon Clements v. Odorless Co., *supra*, and similar cases, as showing that the three patents issued between the date of the original issue and the date of application for reissue, sufficiently constitute or evidence those intervening rights which will bar a reissue. The reissue statute fixes no limit of time within which the application must be made, and does not specify that rights, accruing to the public or to individuals, after the first issue and before the application for reissue, shall affect the latter right. Miller v. Brass Co., 104 U. S. 350; 26 L. Ed. 783. (See Walker 4th Ed. Sec. 226), which first declared this additional condition, did not elaborate the foundation reason for so doing, but we think it must be assumed that the principle of estoppel (perhaps in favor of the public generally), is at the bottom of the rule. *By the issue of a patent, the inventor dedicates to the public everything which he does not claim as his monopoly. Upon this dedication, the public has a right to rely, and if members of the public devote time and money to the manufacture of a device which the inventor has so dedicated, or to the devising, inventing and patenting of structures which embody such a feature, it may be presumed that this is done upon the faith of the dedication; and so the inventor may not be permitted thereafter to*

enlarge his monopoly to the prejudice of these new rights,—even though, except for them, the reissue would be permissible. The settled doctrine has come to be that from a delay of more than two years, and in the absence of any sufficient contrary evidence, these fatal intervening rights (public or private) will be presumed; in the presence of less delay, they must be proved. But see White v. Dunbar, 119 U. S. 47, 52; 7 Sup. Ct. 72; 30 L. Ed. 303; and Milloy Co. v. Thompson Co. (C C. A. 6), 148 F. R. 843, 847; 78 C. C. A. 533.

Since a patent grants or creates no right to manufacture the thing patented, but only a right of exclusion (Swindell v. Youngstown Co., 230 F. R. 438—C. C. A.—(C. C. A. 6 Feb. 8, 1916), it would seem that intervening patents, not followed by manufacture, can furnish the necessary basis for this rule (in a case of less than two years' delay) only because of the effort and expense involved in making and perfecting the inventions to which they relate; in other words, because the absence of the broad claim in the earlier patent has encouraged or misled the later patentee to make and perfect an invention which he would not have undertaken if the earlier monopoly had been wider."

American Automotoneer Co. v. Porter, 232 F. R. 456-462.

"The second reissue was granted as prayed April 2, 1912. The statute (R. S. Sec. 4916; C. S. 1913, Sec. 9461) authorizing reissue when error has arisen 'through inadvertence, accident or mistake, and

without fraud or deceptive intention,' is undoubtedly intended for relief of meritorious inventors who are likely to lose their invention through some accident or mistake. When no intervening rights appear, it should be and has repeatedly been liberally construed. It may be noted that we have not here the situation presented in some of the authorities, where the reissue contains a claim which, after controversy with the Patent Office pending his earlier application, the inventor abandoned, acquiescing in its rejection. * * *

"*Before the second reissue was granted, however, and while the public was advised that the rights which complainant claimed were those only announced to the public in the first reissue, defendant began the manufacture of player piano actions with automatic regulation of the register between note sheet and tracker bar.* It used the fundamental idea of O'Connor, viz., moving the tracker bar to one side or the other, so as to keep its apertures in register with the note sheet perforations, effecting this motion by the operation of a bellows motor, setting the motor in operation by the admission of air to it through an auxiliary aperture in the tracker bar, and automatically regulating the initiation of such motion by means of the note sheet moving over the auxiliary aperture. The defendant's device, however, consisted of a single bellows motor, moved one way or the other as it was exposed to pressure or suction. This device (Exhibit N), was not covered by the first reissue, the claims of which were confined to two motors and apertures. *That defendant entered upon the manufacture*

and sale of these automatic trackers before the grant of the second reissue made public the fact that complainant was making claim to the broad invention covered by the claims here in issue is fully established. That only five of these player piano actions were actually sold is immaterial. Not only the five are free from this reissue, but the business of manufacturing and selling automatic trackers of the type shown in Exhibit N, which was entered into in the belief, warranted by complainant's conduct and mistakes, that defendant's tracker would not be challenged as an infringement under either the original patent, which had been given up, or the reissue, which did not cover it, cannot be interfered with under this second reissue."

Autopiano Co. v. Amer. Player Action Co., 222 F. R. 281.

"The claims of the original are enlarged in the reissue, and the suit rests upon the enlargement. But little more than two months, and less than three, elapsed between the date of the original and the application for the reissue. This does not seem to be too long a time to take, before proceeding for an enlargement of the claims to cover parts of the invention described but not claimed in the original, *especially when not shown to be done to cover the progress of other inventors.* The decided cases appear to warrant this course."

Hammond v. Franklin, 22 F. R. 833-836;

Miller v. Brass Co., 104 U. S. 362;

James v. Campbell, *Id.*, 371;

Clements v. Odorless App. Co., 109 U. S. 641; S. C. 3 Sup. Ct. Rep. 525;

Hartshorn v. Eagle Shade Roller Co., 18 Fed. Rep. 91.

A case which this court may desire to consider, since it was decided by this court in October, 1917, and contains extensive references to the law, is Abercrombie & Fitch v. Baldwin, 245 U. S. 198; 62 L. Ed. 240. It has been contended that in that case this court sustained a broadened reissue applied for seven years after the issue of the original. If so, the court would not only have ignored the doctrine of intervening rights but also the two year rule in Miller v. Brass Co. and the many cases in which the two year doctrine has been affirmed and applied. Even a casual study of the case shows that the court had no such intention. The court evidently considered the defendant as having been an infringer of the original patent, and the reissue as a narrowed one, as it very evidently was, since the amendment of the claim by reissue consisted in adding certain words to the original claim. The reason for the court's decision is shown by the following statement:

> "Indeed, we are of opinion, that the original patent did not need the exposition of the reissue. It exhibited an invention of merit, certainly one entitled to invoke the doctrine of equivalents."

We believe that Abercrombie & Fitch v. Baldwin is entirely inapplicable to the case at issue, but have discussed it briefly lest we should be thought attempting to avoid it.

The two year rule rests upon the equitable principle of laches and the theory of intervening rights upon the equitable principle of estoppel. In applying the two year rule, the court considers a patent invalid because the patentee was guilty of laches in waiting more than two years before applying for reissue. In the cases defining intervening rights, the court considers patents invalid because the public acted upon the abandonment or waiver of the patentee and thus established an estoppel. Both the two year doctrine and the doctrine of intervening rights rest upon sound equitable principles.

In the present case the plaintiffs having elected to claim a particular type of supporting bracket and defendants having accepted the dedication to the public of matter not claimed, and acted upon it in good faith, a clear case of equitable estoppel arises. Using the technical term commonly used to define this particular type of estoppel, the defendants may be said to have established a clear case of "intervening rights."

Intervening Rights Cannot Arise Where the Reissue Is Narrower Than the Original.

The greater portion of the apparent confusion set forth in the petition for the writ of *certiorari* arises from the fact that the petitioner's counsel ignored the fundamental distinction which must be drawn between broadened and narrowed reissues.

In a broadened reissue the patentee, having accepted a narrow patent, later decides to broaden it by reissue. Having dedicated certain rights to the public, by his failure to insist on broad claims, he later withdraws that dedication and elects to ask for a monopoly on certain features previously not claimed and therefore so dedicated.

In a narrowed reissue the patentee, having by inadvertence, accident or mistake, obtained claims which are broader than his invention, elects to surrender his broad patent and accept a narrower one. In a narrowed reissue there is no dedication to the public by failure to claim certain features in the original and therefore no estoppel which can be made the basis of intervening rights. Any one infringing the later narrow reissue must certainly have infringed the original broad patent, and he cannot claim to have been misled to his injury thereby.

The distinction in principle between broadened and narrowed reissues is well recognized in all the decisions relating to intervening rights, and if this distinction is kept in mind, the decisions on the subject are found to form a surprisingly harmonious whole. In fact, while the development of the law of reissues and intervening rights has been gradual, it has nevertheless been very consistent and logical and now rests solidly on a great mass of decisions and particularly upon the previously cited decisions of this court.

The law in regard to narrowed reissues is well stated in Eames v. Andrews, 122 U. S. 40; 30 L. Ed. 1064, in which the court said:

> "If the amended specification does not enlarge the scope of the patent by extending the claim so as to cover more than was embraced in the original, and thus cause the patent to include an invention not within the original, the rights of the public are not thereby narrowed and the case is within the remedy intended by the statute. Those cases in which this court has held reissues to be invalid were of a different character, and were cases where by the reissued patent the scope of the original was so enlarged as to cover and claim as a new invention that which was either not in the original specification, as a part of the invention described, or if described, was, by not being claimed, virtually abandoned and dedicated to public use."

"Such is not the present case. Here the amended specification does not enlarge the scope of the original invention as described in the original specification. It simply, in this respect, supplies a deficiency by describing with more particularity and exactness the means to be employed to produce the desired result."

See also:

"As will be seen, this is a case of diminished, and not enlarged, reissue. * * * Therefore the two year rule mentioned in Miller v. Brass Co., 104 U. S. 350, and Mahn v. Harwood, 112 U. S. 354, * * * should not apply."

Conroy v. Penn. Electrical & Mfg. Co., 173 F. R. 299.

"The books are full of cases where the courts have appreciated the importance of intervening rights, and have realized the injury which may or will be done to the public where, after either an unreasonable delay or a process of experimentation with court decisions, an attempt is made to broaden claims. In such instances, industry and commercial progress may be arrested if the courts were to hold to any doctrine which made it dangerous for energetic men to enter upon some well-defined field of activity only to discover subsequently that a grant theretofore given had been enlarged beyond the limits so defined. Thus it is that there is a line of cases of which Miller v. Brass Co., 104 U. S. 350; 26 L. Ed. 783, and Thompson-Houston Electric Co. v. Western Elec. Co., 158

Fed. 813; 86 C. C. A. 73, are examples. *Nowhere, however, has it been held that a reissue wherein the claims are narrowed is void for laches.*"

Motion Picture Patents Co. v. Laemmle *et al.*, 214 Fed. 787-797.

"As to reissue.—* * * It seems to us that the change effected by reissue was not a broadening of the claims, but a narrowing of them, and that, therefore, the reissue more than two years after the granting of the original patent was proper under Eames v Andrews, 122 U. S. 40; 7 Sup. Ct. 1073, 30 L. Ed. 1064. We think that Miller v. Brass Co., 104 U. S. 350; 26 L. Ed. 783, and the other cases cited do not apply. As originally drawn the claims would cover devices of the prior art; as reissued they were narrowed down to cover the unitary, positively acting, novel combination of Hazeltine."

Specialty Mach. Co. v. Ashcroft Mfg. Co., 213 F. R. 35-40.

"There is nothing in the record to show that the reissue should be held invalid for delay in applying for it, nor is the doctrine of intervening rights applicable to this case. Baldwin v. Abercrombie & Fitch Co. (D. C.), 227 F. R. 455; Motion Picture Patents Co. v. Laemmle, *et al.*, (D. C.), 214 F. R. 787. The reissue patent is valid. * * *"

Stahlbrodt Co. v. Ford Motor Co., 233 F. R. 678-682.

"The specification and claims" (of the original) "are undoubtedly broader than the invention disclosed. If the Maurer window was 'within the frame,' it was included in the Giesey claims. The patent was granted without any suggestion from the Patent Office of the existence of the Maurer device. Had it been called to Giesey's attention, a correction of this specification and claims could then have been made. Within specified limitations, that which may be done by amendment in the Patent Office pending the application may be done after the patent is granted, by a reissue. * * *

"Was it for the same invention? The device actually made and marketed is the same. The defendant admittedly infringed the invention disclosed in the drawings annexed to the original specifications. The claims of the reissue are narrower than those of the original patent, and were drawn so as to confine the claims to the specific invention disclosed in the original. No addition to, or change in, the drawings were made, and such new or substituted parts in the reissued specification in no way change the device originally described and patented. This is not the case of the securing of a reissue to broaden the claims so as to cover a device not covered in the original. The defendant is not charged with infringement of a device not embraced within the original specification, and the reissue was not sought to so enlarge the invention as to furnish the basis to sustain such a charge. Having reached the conclusion that the description contained in the original specification is sufficient to support

the claims of the reissue, I think that only a comparison of the two patents is necessary to convince that the claims of the reissue do not point out a new invention, but, by eliminating the broad features of the original patent, confine the invention to the one disclosed in the original."

Steiner & Voegtly Hdwe. Co. v. Tabor Sash Co., 178 F. R. 831-841.

An apparent exception to the rule that intervening rights cannot arise in the case of narrowed reissues is the case of Diamond Drill Contracting Co. v. Mitchell, 269 F. R. 261-263 (C. C. A. 9th Circuit). In this case the court said:

"The appellant contends that no lapse of time within the life of the patent bars an application for a reissue in a case where the application narrows the claims, rather than broadens them. It is true that some of the courts have intimated that lapse of time may be of small consequence on an application for reissue, where the original claim was too broad. But there is no room for the distinction in cases where, as here, other inventors, relying upon the state of the art, have patented new inventions and the same have gone into use. Said Judge Coxe in Carpenter Straw-Sewing Mach. Co. v. Searle (C. C.) 52 F. R. 809 (decision affirmed by the Circuit Court of Appeals, 60 F. R. 82):

'If an inventor, holding a patent with a void claim, has slept upon his rights for years until other rights have become

fixed, what possible diffierence can it make, upon principle, whether he invades those rights and secures an inequitable advantage by means of a broader claim or a narrower claim? The complainant here seeks to do by a narrower claim (assuming it to be narrower) precisely what other complainants have vainly sought to do by an expanded claim. It cannot be doubted that the attempt is as inadmissable in the one case as in the other.'

See, also, Pelzer v. Meyberg (C. C.), 97 F. R. 969, and Hoskin v. Fisher, 125 U. S. 217; 31 L. Ed. 759."

The Diamond Drill case, however, although not supported by the decisions of this and other courts dealing with the subject of intervening rights, is nevertheless not contradictory to the weight of the reported decisions on the subject, if all the facts disclosed in the reported decision in the Diamond Drill case are studied. The case was not decided upon the ground that the defendant had acquired intervening rights but upon the ground that plaintiff was guilty of laches in waiting 13 years to assert its rights.

In its original patent the plaintiff failed to indicate in any way that it considered the particular features, later claimed by reissue, were new or useful. It did not impute any particular novelty or utility to these particular features in the specification and it claimed them merely as

"means." Later after these particular features had come into general use and 13 years after the issue of the original patent it decided to claim them narrowly. The court held the plaintiff guilty of *laches*.

We do not consider that the intervening rights of defendant were in any way a factor in the Diamond Drill case which was purely a case of inexcusable neglect or laches on the part of the patentee.

An excellent reason why no estoppel or intervening rights can arise in the case of a narrowed reissue is that in such a case the applicant for the patent is not at fault. The Government of the United States has established the Patent Office, and has appointed and pays a Commissioner of Patents whose duty it is to examine applications for patents and reject claims which are too broad. If a patent issues with claims which are too broad, this is a fault of the Patent Office, which is organized and equipped to prevent this, and the applicant is therefore not at fault if he relies on the allowance of his claims by the Examiner in charge of such cases. The fault, if any, lies in the Patent Office and to penalize an applicant for a mistake made by a governmental agency would be most unjust.

Intervening Rights Are Public Rights and Invalidate the Reissue.

This raises a very interesting question, which is:

Do well-established intervening rights render a reissue patent invalid or do they simply set up a bar to recovery from the intervenor and those directly associated with him?

Or put differently:

Are intervening rights public or personal rights; that is, does the intervenor acquire rights personal to himself or does the public acquire co-extensive rights which bar any recovery from the public and, hence, render the patent invalid?

The question of whether intervening rights are personal or public is the only point in this case upon which the decisions are not definite and which warrants consideration by this court. And it seems to us that the reason this question has not been cleared up earlier is that no litigants have ever been, nor *will* any litigant ever be interested in clearing up the question of what rights the general public have in the results of litigation involving intervening rights. It is a point upon which the interests of both complainant and defendant are identical. The defendants herein, for example, are better off to be declared possessed of rights under an

otherwise valid patent than to have the Keller monopoly destroyed.

We are, however, satisfied that the logical conclusion is that defendants, as intervenors, are merely the representatives of the public and that once it is proved that defendants have intervening rights, the Keller patent, as to all except the first three claims which are the narrow claims of the original, becomes void and of no effect. What little law we can find supports this conclusion which seems to us to be logical. It seems to us also that this is a most important point to settle and one which will never come before this court more directly than in this case. Obviously, our exposition of the law would be weak and our brief ineffective if we did not say that, since the dedication of rights not claimed in the original patent was a dedication to the public, defendants in accepting and acting upon such dedication and thus setting up intervening rights acted as representatives of the public and any rights acquired by defendants herein are not personal to them but are public rights which invalidate the patent.

Intervening Rights May Arise Due to Acts Performed Prior to the Issue of the Reissue Patent, the Period of Intervention Not Being Terminated by the Mere Filing of an Application for Reissue.

The courts, in deciding cases involving intervening rights, have in general held that the intervention must occur, as it has in this case, before the owner of the patent *applies* for his reissue. In so doing they have been influenced in some degree by Miller v. Brass Co. which depends upon the equitable principle of laches. The owner of the patent, who would otherwise lose his right to reissue, must under Miller v. Brass Co. make it good within two years to prevent his laches from destroying his rights, quite independent of whether his dedication to the public is recognized and accepted.

But intervening rights arise as a matter of *estoppel*. The principle depended on is somewhat different from that in Miller v. Brass Co. and different reasoning should prevail. To prevent intervening rights from being effective, it is not only necessary that the owner of the patent overcome his laches, but it is further necesary that in some positive manner he prevent others from accepting his dedication to the public and thus prevent an estoppel arising.

If intervening rights arise due to an acceptance of the dedication to the public in the original patent, why should the time for such acceptance be terminated by the filing of an application for reissue? This filing of an application for reissue is not a public act, in the sense the issue of the original patent was. On the contrary it is an act of which the public has no notice. Even admitting that a certain defendant may have some notice by personal service or otherwise, it is evident that there is no notice to the public by the reissue applicant of his enlarged claims until his reissue patent issues. How can a private and secret application nullify the general and widespread publication of the original patent and its accompanying dedication of rights? We respectfully submit that not only should intervening rights be considered as arising from acts committed prior to the *application* for reissue but that any similar acts committed after the publication of the original patent and prior to the *issue* of the reissue should have a similar effect. In other words, it seems to us logical to hold that the public dedication of the original patent can only be withdrawn by an equally public withdrawal arising from the reissue.

In the case now before this court, this question perhaps does not arise directly, since our clients were fully embarked in the manufac-

ture of the alleged infringing devices considerably prior to the date of application for reissue. It arises indirectly, however, since even if the court were to hold that the evidence is insufficient to show manufacture before the date *of application* for reissue, the evidence is abundantly sufficient to show that our clients were embarked in such business long prior to the date *of issue* of the reissue patent.

There Is No Positive Right of Reissue Which Must Be Respected.

The plaintiffs in the courts below and in their petition for writ of *certiorai* laid great stress on the fact that Keller had a right to reissue his patent with broader claims and that the public was charged with knowledge of this fact and that defendants herein went ahead with their manufacturing at their peril.

This legal theory is based upon a line of decisions starting apparently with Crown Cork & Seal Co. v. Aluminum Stopper Co., 108 F. R. 845. The syllabus in this case reads as follows:

> "Within two weeks after the issuance of a patent to defendants they were notified by complainant of his claim that it was an infringement of a patent to him just previously issued. Within six months thereafter complainant applied for a reissue, which, after a contest by defend-

ants, was granted. Held, that defendants were presumed to have knowledge of complainant's right under the law to a reissue, and, as they were also familiar with plaintiff's invention, they proceeded to manufacture under their patent at their peril, and could not claim that complainant was estopped to assert his rights under his reissued patent."

This syllabus is misleading and incorrect.

The only portion of the decision relating in any way to this question is found on page 860 and is as follows:

> "We are further of opinion that there has been in this case no unreasonable delay *and no intervening right* which forfeits or waives the right of reissue covered by the statute. The Hall patent was applied for in February, 1894, and the application for it could not have been induced by the limitations in the claims of the Painter patent, and there is no reason to believe that the course of the parties claiming under it was in any respect different from what it would have been if the original had been precisely in the terms of the reissue. Under all the circumstances of this case, the application for reissue was made within a reasonable time. No notice of any manufacture, use, or sale under the Hall patents was brought to the knowledge of Painter before his application for reissue, *and there was no manufacture or sale or publicity such as to import notice to him.* The case would be different if Painter had unreasonably delayed to assert

his rights to reissue after such notice was brought home to him, *and where his silence and inaction had misled other parties to their injury;* and the fact that the original patent contained a statement of his invention which covered the subject-matter of the reissued claim, and that a reissue to fully secure the invention disclosed was authorized by law, was sufficient notice that this patent was subject to such right of reissue, which right was liable to be exercised at any time at least within two years. The spirit and terms of the law authorizing reissues would be defeated, and the obvious purpose of its enactment would be ineffectual, if we applied to this case those restrictions which some of the decisions apply to cases where there has been long delay in the application for reissue, and the obvious purpose of such applications has *been to appropriate subsequent independent inventions not originally disclosed in the patent.*"

It is evident that in that case the only basis of intervening rights was a patent which issued before the reissue was applied for. As the court specifically says, "There was no manufacture or sale or publicity such as to import notice to him."

It is evident, therefore, that the syllabus is incorrect. The court did not hold that any one who manufactures devices prior to the application for reissue does not acquire intervening rights, but held that no one can start to manufacture *after the allowance of reissue* and then

set up *as a defense* a patent owned by the infringer and issued prior to the application for reissue. This meaning is fully supported by the language and facts of the case. When so understood, this case is in full accord with the other cases cited herein. In other words, the Crown Cork & Seal Co. v. Aluminum Stopper Co. case simply means that the application for or issue of a patent is no proper basis for intervening rights, a conclusion with which we fully agree and which we have discussed elsewhere in this brief.

We find this "right of reissue" referred to in Bertels v. Trethaway, 175 F. R. 971, but in that case it is evident the defendants infringed the original patent and, as well stated in that decision, they were not misled to their hurt. Intervening rights cannot arise from acts of infringement of the original patent, as an *infringer* of the original patent cannot be said to be taking advantage of any dedication to the public.

We also find this right of reissue raised in Weber v. Automobile & Accessories Mfg. Co., 190 Fed. 189. In that case the District Judge said, on page 193:

> "Defendant says Norwood acquired rights in that time of which the reissue cannot deprive him. It says it has succeeded to those rights. The defendant has

> failed to prove beyond reasonable doubt the existence of the facts upon which such rights rest."

It is evident, therefore, that the learned judge recognized that such facts, if proved, would have raised such rights and defeated the reissue.

Probably the judges in the last two cases in some measure misunderstood the Crown Cork & Seal Co. case which they quote, due to the misleading wording of the syllabus.

An applicant for patent has imposed upon him certain formal obligations and two main duties, namely, he must fully *disclose* the invention and he must *particularly point out and distinctly claim* the invention. The latter requirement is for the purpose of informing the public what the bounds of his monopoly are so that they may avoid infringement.

It is, however, urged by the plaintiff herein that the patentee has, in addition to the tangible and definite monopoly set up by the claims, a further undefined, indefinite, and intangible monopoly bounded only by the aggressiveness of his attorney in some future application for reissue and the resistance of the Patent Office thereto. This theory would set up an indefinite and uncertain situation which it is the aim of the patent laws to avoid. There is laid upon the applicant the duty of particularly pointing

out and distinctly claiming his invention. Why should this be necessary if at any time within two years after the issue of his patent he has the right to claim anything that can be supported by his disclosure and the state of the art?

In considering patent cases, as in all cases, we should at all times keep in view those constitutional provisions upon which our legal system rests. All patent legislation rests upon Article I, Section 8, of the Constitution which provides that "The Congress shall have power to promote the progress of Science and Useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

It is evident that in the Constitution the paramount rights of the public are recognized.

We respectfully submit that the progress of neither Science nor the Useful Arts will be promoted by any rule under which a patentee shall be given two years after the grant of his patent to decide what claims he shall ask for. Any such rule would throw the whole industrial system of the country into chaos. No manufacturer would know what might be finally claimed in a later reissue and all industry would be blighted by the sinister shadow of this right to reissue. While this right to reissue exists, it is extinguished by any intervening rights that may arise.

It is also evident that this so-called right of reissue, depending as it does upon the apparently misunderstood Crown Cork & Seal Co. decision, has no real basis in law and is opposed by all the decisions of this court quoted above.

Patents Applied for, or Issued During the Period of Intervention, Are Not a Recognition of Any Dedication to the Public in Prior Patents and Form No Substantial Basis for Intervening Rights.

The interesting question arises from a consideration of Crown Cork & Seal Co. v. Aluminum Stopper Co., as to whether the application for, or even the issue of, a patent disclosing structure not infringing the claims of an original patent but infringing the claims of a later applied for reissue, will raise intervening rights.

We think the learned judges who decided Crown Cork & Seal Co. v. Aluminum Stopper Co. were very logical and that the application for and issue of such a patent does *not* raise intervening rights. It is obvious to us that the mere making of an application for an improvement patent is not such an acceptance of a dedication to the public as will raise intervening rights. By filing such an application, the applicant for such an improvement patent does not

signify that he has considered the claims of the original patent in any way, or that he intends to rely in any way on the limitations thereof. He might make such an application quite regardless of whether the claims of the original were broad or narrow. Such an application does not involve any consideration of the rights of the owner of the original patent, but merely the assertion of a new right to an improvement thereon. So while there are cases that consider the application for or issue of such improvement patents as setting up intervening rights, it is evident that this view is not logical.

Our opinion on this point is sustained by American Automotoneer Co. v. Porter, 232 F. R. 456, in which it was said:

> "In this case, each of these three patents was applied for before the issue of the Weyand original, and so, at the time of such original issue, was a pending application showing an invention then completed and reduced to practice. Such patents, which merely go to issue in the interval, cannot raise the estoppel upon which this doctrine must at last depend—though it may be called 'public policy.' There is no evidence that the inventors under any one of them manufactured, and so they do not seem to have done anything in reliance upon the apparent dedication made in the first patent, excepting merely that they paid their final fees."

The Fact That an Applicant Misunderstood His Attorney as to the Scope of the Claims is Not in Reality Inadvertence, Accident, or Mistake Sufficient to Justify Reissue.

The Keller reissue was based upon the following statement:

> "And that such errors arose through a misunderstanding between applicant and his attorney; that applicant had fully described to his attorney the several features of his invention now claimed in this present application, and was informed by his attorney that the claims as allowed covered the general and broad feature of supporting the shield by a rod and a double hinged supporting member and that applicant relied on such statement as he understood it at that time; whereas it now appears to applicant that such statement was a mistake or that he misunderstood his attorney."

The reissue statute is quite definite in requiring "inadvertence, accident, or mistake" as a pre-requisite to reissue. Now, since few inventors are skilled in patent law, it is evident that many of them can *conscientiously* take oath to allegations similar to those made by Keller and that any of them can *safely* do so since what a man *understands* a patent to mean is a matter that cannot be successfully disputed. This being the case, it is evident that substantially every patent *can* be reissued with broader claims.

Now in ordinary matters there is an identity of responsibility between any litigant and his attorney which cannot be disputed. An unsuccessful litigant, who asked for a new trial because he did not understand the full force of stipulations entered into by his attorney, would be given scant consideration. The sole purpose of allowing any person an attorney in any proceeding is to supply him with a skilled advocate to supply the clients deficiencies. In no other proceeding that we are aware of can the personal lack of knowledge of the law of a party be availed of where an attorney is relied upon. It seems to us that, since substantially every applicant for patent is unskilled in patent law and hence hires an attorney who is, allegations that the applicant is unskilled or that he misunderstood his attorney are a very unsubstantial basis upon which to allege "inadvertence, accident, or mistake." In fact, we seriously question whether any patent ever issues where such allegations could not be made or in which such allegations, if made, could be disproved. This being the case, the inadvertence, accident, or mistake of the statute becomes a mere legal fiction. We respectfully submit that any reissue upon such grounds is not in accordance with the statute, or the decisions relating thereto, and that such a reissue is illegal

and void. This is in accordance with the plain words of Miller v. Brass Co. previously quoted herein.

The Keller Reissue Patent Contains a Needless Multiplication of Nebulous Claims and is Therefore Void.

This defense was raised in the courts below but since both courts felt that the defense of intervening rights was complete, this minor defense was overlooked. The Keller invention is a simple device consisting of a plate of glass and a simple hinge. Yet the ingenuity of the patent solicitor has expanded the original patent into a reissue containing twenty-three claims. All of the new claims, numbered from 4 to 23, are exceedingly indefinite and "nebulous." The court said, in Carlton v. Bokee, 17 Wallace 463, 21 L. Ed. 517, that:

> "We think it proper to reiterate our disapprobation of these ingenious attempts to expand a simple invention of a distinct device into an all-embracing claim, calculated by its wide generalizations and ambiguous language to discourage further invention in the same department of industry and to cover antecedent inventions. Without deciding that a repetition of substantially the same claim in different words will vitiate a patent, we hold that where a specification by ambiguity and a needless multiplication of nebulous claims is calculated to deceive and mislead the public, the patent is void."

This decision is quoted by Walker, section 455, who says:

> "It is a defense of decided merit, aimed by the policy of the law at nebulous claims. The courts have not heretofore gone so far in upholding this defense as the statute would justify."

In Robinson v. Tubular Woven Fabric Co., 248 F. R. 541, the court said:

> "The duty rests upon the courts to guard the rights of the public against that form of unjust monopoly which may result from sustaining highly abstract claims. The language of the Supreme Court in Carleton v. Bokee, 17 Wall 463-471, 21 L. Ed. 517, should be always in mind. * * * An attempt to save such claims by a beneficent interpretation is not only contrary to well established patent law but a practical mistake. Patent claims are advisedly made by skilled solicitors and if they choose to claim abstractions or high generalizations, they must stand by them."

See, also:

> Edgarton v. Furst, 9 Fed. 457, and
> American Bell Telephone Co. v. National Telephone Manufacturing Co., 109 F. R. 976, at page 1043.

Nebulous claims are claims which are highly abstract or general, claims in which all inclusive terms are used like means, members, device, element, etc. If the court will read a few of the

last nineteen claims of the reissue, those being the new claims, it will be evident that these claims are of that character, that is, that they are highly abstract or general, or in the words of the decisions, they are nebulous. There are twenty-three claims in the reissue which, considering the simplicity of the structure, is certainly an outrageous multiplicity.

We regard the Carlton v. Bokee ruling as a salutary one and believe a reiteration of it by this court would have an excellent effect both on the Patent Office and certain solicitors. The patent statute says that an applicant "must particularly point out and distinctly claim" his invention. This, Keller does not do and upon these grounds alone the patent should be declared invalid.

When a solicitor presents and when the Patent Office allows a patent such as the Keller reissue No. 14,919, with indefinite and nebulous claims, they impose an unnecessary burden on the public and upon the courts, which must consider and interpret such patents. They render uncertain what should be certain. Such patents should be condemned and the practice of issuing them should be stopped.

Our Client's Intervening Rights are Shared in by the Public and the New Claims in the Keller Reissue Patent are Void.

Having considered the state of the law of reissues, we can now consider how the law applies to the present case.

This case comes up upon a writ of certiorari upon the sole ground of confusion of law on a question of national importance. The trial judge and the three circuit court judges have considered the facts and they are unanimous as to these facts.

The decision of the Circuit Court of Appeals is found in 287 F. R. 838, and quotes with approval the memorandum opinion of the district judge. The opinion of the Circuit Court of Appeals reads as follows:

> "That there is nothing of a pioneer nature in Keller's device is abundantly shown by the numerous exhibits appearing in the record of windshields and deflectors, of one kind and another, attached to automobiles long before Keller entered the field. Both his drawings and specifications show that his shield is attached to the machine by brackets that run up and down the glass, holding it at the top and bottom, whereas the appellee's device holds the glass by means of a fixture attached to the face of the glass and which does not extend to either of its ends. That for one device to be the equivalent of another it is essential that the former must perform the same

function of the latter in substantially the same way is thoroughly settled law. Machine Co. v. Murphy, 97 U. S. 120, 125, 23 L. Ed. 935; Werner v. King, 96 U. S. 218, 230, 24 L. Ed. 613; Simplex Window Co. v. Hauser Reversible Window Co., 248 Fed. 919, 926, 161 C. C. A. 37; Dey Time Register Co. v. Syracuse Time Recorder Co. (C. C.), 152 Fed. 440, 451; Walker on Patents, Sec. 348; Curtis, Patents (4th Ed.), Sec. 310.

"The evidence shows that, prior to any knowledge on their part of the Keller patent, the appellees had been working on their device, and had made and sold a few of them, but subsequently learned of and became familiar with the original Keller patent, and before proceeding with the manufacture and sale of their own device, and prior to the making of the application for the reissued Keller patent, they applied to the attorneys who procured the original Keller patent for information as to whether their device was an infringement upon that of Keller, saying that they did not wish to infringe, and, being told that it would not be an infringement, they proceeded with the manufacture and sale of their own on a substantial basis. We therefore think it clear that the appellees had and have such intervening rights as were properly protected by the court below. See Coon v. Wilson, 113 U. S. 268, 5 Sup. Ct. 537, 28 L. Ed. 963; Topliff v. Topliff, 145 U. S. 156, 12 Sup. Ct. 825, 36 L. Ed. 658; Dunham v. Dennison, 154 U. S. 103, 111, 14 Sup. Ct. 986, 38 L. Ed. 924; Auto-Piano Co. v. American Player Action Co., 222 Fed. 276, 138 C. C. A. 38.

"The decree of the court below is affirmed."

We assume that this court is willing to accept these facts, which are abundantly supported by the evidence.

Upon the facts our clients have an unusually strong case of intervening rights. They were experimenting prior to the issue of original patent; they investigated the rights conferred by the original patent and were advised they did not infringe and they were actively in business prior to application for reissue; they did not, in fact, infringe the original and they do, in fact, infringe the reissue. This, to our mind, is a perfect case of intervening rights.

In the District Court, the plaintiff attempted to "declare" upon claims 1, 2, 8, 17, 21 and 23. Both the District Court and the Circuit Court of Appeals ignored this declaration. It is obvious that claims 1 and 2 of the Keller reissue patent No. 14,919 are not infringed, since our clients do not have brackets engaging the transparent shield member at its upper and lower ends, as specified in claims 1 and 2. That is, they do not have brackets 17 and 18 which engage the ends of the glass member 14. See Fig. 5 of the Keller reissue patent No. 14,919. It is also obvious that our clients do not infringe claim 3 which is specific to the structure

shown and this claim 3 was not sued on. Claims 1, 2 and 3 of the reissue are therefore not infringed and so far as we know are valid.

Claims 4 to 23 of the reissue are not found in the original. They all read substantially on the intervening device of our clients and are therefore invalid.

Conclusions.

In conclusion we would say that although we have spent a great deal of time on the question of intervening rights and studied several hundred decisions in relation thereto, we find astonishingly little confusion in these decisions. If all the facts are considered in each case, there is substantially *no* confusion. The decisions flow naturally one from another and form a coherent and logical whole.

In Miller v. Brass Co., this court applied the equitable principle of laches and thus curbed a great national abuse of the power to reissue. In Coon v. Wilson, Dunham v. Dennison and other cases cited herein, it has applied the principle of estoppel and further curbed the same abuse. Neither the two-year rule nor the rule of intervening rights has any statutory foundation. They rest upon broad equitable principles and are essentially the product of this court. They are definite, practical, and certain, and their value to the country has been incalculable.

Owing to the growth of our nation, it has become impossible for this court to regularly hear patent appeals. Only an occasional case can come before this tribunal. The days when decision after decision in patent cases flowed from this court are forever gone. The patent bar must in a large measure now depend upon the decisions of the lower courts.

But it will be sometimes necessary that this court consider patent cases. Our law is a living thing and as it develops through the hard labor of our judges, it is desirable that this court, from time to time, shall clarify and explain it. Such a time has come in the law of reissues.

There is an opportunity for the court to do a great public service in this case by a lucid exposition of the law of intervening rights. It is not necessary, as it was in Miller v. Brass Co., to lay down any broadly new principle. All that is needed is a definite and plain restatement of principles already developed and applied. The large number of reissues and the great amount of patent litigation thereon shows the importance of the subject. It is probable that a decision of this court will materially reduce both.

We think this court should hold:

First, that intervening rights arise, wherever any person accepts the dedication to the public of matter shown but not claimed in any patent,

this acceptance being evidenced by acts which infringe a later reissue but do not infringe the original patent.

Second, that the acceptance of the dedication must be by acts which evidence a plain intention to rely on the dedication and that the mere application for, or issue of, improvement patents does not disclose such an intention.

Third, that the dedication to the public, being made in official publications by the issue of the patent, can only be nullified by a similar publication of the reissue and acts prior to the date *of reissue* are available to prove intervening rights.

Fourth, that the intervenor in accepting the dedication to the public in the original patent and acting upon it, acts as a representative of the public and the intervening rights so set up are rights in which the entire public shares, the effect of such rights being to invalidate any claims in the reissue that are broader than the original claims and infringed by the acts of the intervenor.

Fifth, that the two-year rule does not apply to and no intervening rights can arise in the case of a narrowed reissue.

Sixth, that the Keller reissue patent No. 14,919 is invalid as to the new claims inserted

by reissue, that is as to claims 4 to 23 inclusive, due to intervening rights.

Seventh, that, in addition, the entire Keller patent is invalid since it contains a multiplicity of nebulous claims.

Respectfully submitted,

FORD W. HARRIS.

Counsel for Respondents-Defendants.

Los Angeles, California, Jan. 31, 1924.

KELLER ET AL., DOING BUSINESS AS HARTFORD WINDSHIELD COMPANY, *v.* ADAMS-CAMPBELL COMPANY, INC., ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 315. Argued February 27, 28, 1924.—Decided April 7, 1924.

1. An ordinary patent case, with the usual issues of invention, breadth of claims and infringement, will not be brought here by certiorari unless it be necessary to reconcile decisions of the circuit courts of appeals on the same patent. P. 319.
2. Certiorari granted under the impression that the case involved an important general question under Rev. Stats., § 4916, as to rights intervening between the issue and reissue of a patent, will be

dismissed when it is found that the case was really disposed of by the lower courts upon the ground of non-infringement. *Id.*
Writ of certiorari to review 287 Fed. 838, dismissed.

CERTIORARI to a judgment of the Circuit Court of Appeals affirming a decree of the District Court dismissing a bill to enjoin infringement of a patent.

Mr. Wm. A. Loftus, with whom *Mr. Chas. E. Townsend* and *Mr. Jas. E. Kelby* were on the brief, for petitioners.

Mr. Ford W. Harris, for respondents, submitted.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This was a suit to enjoin the infringement of a patent for an improvement in auxiliary windshields for automobiles. It was brought on a reissued patent. The reissue was granted on the ground that the original patent was inoperative to protect the real invention due to defective and insufficient and too narrow claims, all of which arose through inadvertence and mistake due to misunderstanding between the inventor and his solicitor. The defect in his claims was alleged to have been called to his attention April 1, 1919, his application for reissue was filed May 22, 1919, six months and ten days after the granting of the original patent, and the patent for reissue was granted July 20, 1920.

A. F. Kipper, who was the active person among the defendants in designing and promoting the manufacture of the windshield charged to be an infringement, was familiar with the device, the specifications and claims of Keller. He conceived of his device in December of 1918, made some models of it in February of 1919, and in association with one Dick Smith, got up some experimental dies and tools for its manufacture and sale in April and May of that year. Kipper was an employee of Adams-

Campbell Company and that firm in August of 1919 made a contract with Kipper to go into the business of making and selling his product.

The suit for infringement was begun July 1, 1921. All the usual defenses were set up, including lack of invention, the invalidity of the reissue and non-infringement. There was only one expert witness produced by the plaintiff as to the originality and utility of the invention and the infringement by the respondent's device. His evidence was presented in an affidavit but he was tendered for cross-examination which the defendants below declined to pursue. No expert evidence was offered by defendants though they introduced a number of patents to show the state of the art.

The patent is for glass wings or auxiliaries secured in an adjustable manner to the main windshield of an automobile. Their principal object is thoroughly to prevent the creation of a draft through the vehicle body, and they are so mounted that they will not obstruct vision and will have a universality of movement on a double hinge such that they can be changed from their normal position of preventing a draft in cold or windy weather to a deflected position permitting varying degrees of draft desirable in hot weather. To avoid the necessity of a frame around the glass, and to hold it safely and firmly and avoid danger to occupants of the car from breakage and flying pieces of glass, a hollow rod extends lengthwise along the shield, and connects with, and spaces apart, clamp brackets along each end of the shield. The rod is attached at its middle to a double hinge joint giving the shield the universal movement already referred to, and having means firmly to lock it in any position. The real difference between the device as shown in the patent and the alleged infringement is in the method by which the glass is clamped. In the patent, the clamps operate on both sides of the ends of the glass, engaging its opposite surfaces. In the de-

fendant's device, these clamps are brought nearer to the center of the shield member because they are held by perforations in the glass and do not need to reach over to the ends.

The District Court dismissed the bill and the Circuit Court of Appeals affirmed this decree. We granted certiorari upon the allegation of the petition, not denied by opposing counsel, that the sole question was whether one who makes and sells articles not covered by the claims of an original patent, but embraced by the enlarged claims of a subsequent valid reissue, applied for within seven months after the original was granted, has intervening rights such that he is not only immune from liability for what he has made and sold, but enjoys an irrevocable and permanent license to continue to make and sell without restriction.

The extent of the operation of the estoppel creating intervening rights in such a case presents a question not free from difficulty. That a reissued patent enlarging claims of the original, although not specifically mentioned in § 4916, Rev. Stats., is authorized by that section, when the failure to claim the larger claims justified by the actual invention was due to inadvertence, accident or mistake, is settled by the decision of this Court in *Topliff* v. *Topliff*, 145 U. S. 156, and other cases. That case also recognizes that one who, pending the application and granting of the reissue, manufactures and sells articles which infringe the reissued patent may be protected on principles of estoppel from the literal application of § 4916, Rev. Stats., which makes the operation of the reissue relate to the date of the original patent. In *Abercrombie & Fitch Co.* v. *Baldwin*, 245 U. S. 198, a change, in the reissue, of the language of an original claim made it cover not only a bent pipe as shown, but a straight pipe as well, where the substance of the invention included both, and it was held that the intervening rights of immunity of the infringer did not ex-

tend beyond the date of the reissue. It is insisted, however, that the *Fitch Case* was not one of an enlarged claim, or at any rate that a reissue was unnecessary because the original claim would have sufficed. The views of the Circuit Courts of Appeals on the general subject of the scope of intervening rights are not entirely easy to reconcile. *Crown Cork & Seal Co.* v. *Aluminum Stopper Co.*, 108 Fed. 845; *General Electric Co.* v. *Richmond Ry. Co.*, 178 Fed. 84; *A. D. Howe Mach. Co.* v. *Coffield Motor Washer Co.*, 197 Fed. 541; *Autopiano Co.* v. *American Player Action Co.*, 222 Fed. 276; *American Automotoneer Co.* v. *Porter*, 232 Fed. 456. The question, if it were really before us, would be one sufficiently important therefore to justify our consideration of it on certiorari.

Both the District Court and the Circuit Court of Appeals in their final disposition of the case gave color of support to the claim of the petitioners that the question of intervening rights was in this case.

The District Judge in dismissing the bill said:

"Without further discussion, I think the defendants occupy the position of one who has intervening rights and under those circumstances I think the plaintiffs are not entitled to a reissue of the patent as against the defendants."

So the Circuit Court of Appeals, after reciting the evidence showing that the defendants had made the shields in question and built the machinery for future manufacture before the patentee applied for reissue and after being advised by counsel that they would not infringe the original patent, said:

"We, therefore, think it clear that the appellees had and have such intervening rights as were properly protected by the court below."

Yet an analysis of the record and the reasons given in the body of the opinions of the two courts leads to a different conclusion. The District Court said of the alleged infringing device:

"The defendants' bracket is an invention. It is a surprise to me that that which the defendants did could be done. The bracket will fit any glass. It is shorter and does not obstruct the view. . . . The defendants' bracket is not an equivalent of the bracket in plaintiffs' original patent, because it does not perform the same functions in the same way, but it performs the function of holding the glass in an entirely different way."

So the Circuit Court of Appeals said:

"That there is nothing of a pioneer nature in Keller's device is abundantly shown by the numerous exhibits appearing in the record of windshields and deflectors, of one kind or another, attached to automobiles long before Keller entered the field. Both his drawings and specifications show that his shield is attached to the machine by brackets that run up and down the glass, holding it at the top and bottom, whereas the appellee's device holds the glass by means of a fixture attached to the face of the glass and which does not extend to either of its ends.

"That for one device to be the equivalent of another it is essential that the former must perform the same function of the latter in substantially the same way is thoroughly settled law."

These passages read in connection with the original and reissued patents and the alleged infringement show that what the courts really held was that the defendants were manufacturing a different invention from that of the plaintiffs, and so could not and did not infringe. Such an ordinary patent case with the usual issues of invention, breadth of claims and non-infringement, this Court will not bring here by certiorari unless it be necessary to reconcile decisions of Circuit Courts of Appeal on the same patent. We therefore find ourselves mistaken in assuming that an important issue of general patent law under § 4916, Rev. Stats., is here involved.

The result is that an order must be entered dismissing the writ of certiorari as improvidently granted at the costs of the petitioner. *Layne & Bowler Corporation* v. *Western Well Works, Inc.*, 261 U. S. 387; *Furness, Withy & Co.* v. *Yang-Tsze Insurance Association*, 242 U. S. 430; *United States* v. *Rimer*, 220 U. S. 547.

Writ dismissed.